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No. _____

IN THE
Supreme Court of the United States

OCTOBER TERM, 1983

NATIONAL COMMITTEE and NATIONAL EXECUTIVE
COMMITTEE OF THE NATIONAL CAUCUS OF LABOR
COMMITTEES,

Petitioners,

vs.

ROBERT MORGENTHAU, DISTRICT ATTORNEY OF NEW YORK
COUNTY and HAROLD WILSON, ASSISTANT DISTRICT
ATTORNEY OF NEW YORK COUNTY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTIONS PRESENTED

1. Whether a federal court can dismiss a civil rights complaint *sua sponte* and without adequate notice, when the complaint seeks injunctive and declaratory relief against a state grand jury investigation and contains non-conclusory allegations that the investigation is being conducted by the District Attorney in bad faith and to retaliate against a political organization for exercising its constitutional rights.

2. Whether a federal judge can refuse to recuse himself on a motion for recusal by a party before him which had published vitriolic attacks on his competency and integrity prior to his appointment to the Court.

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OPINIONS BELOW

In an Order dated April 13, 1983, the Honorable Vincent L. Broderick, District Judge in the United States District Court for the Southern District of New York, denied petitioners' motions for a temporary restraining order and a preliminary injunction and dismissed petitioners' Complaint for reasons stated on the record at oral argument.

By Order dated October 3, 1983, the Honorable George C. Pratt, Circuit Judge, denied petitioners' motion for recusal for reasons stated on the record at oral argument.

The Order of the District Court was affirmed by the United States Court of Appeals for the Second Circuit by Order dated October 11, 1983. No formal opinion was issued by the Court of Appeals.

JURISDICTION

The judgment of the Court of Appeals was entered on October 11, 1983. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL, STATUTORY AND RULES PROVISIONS INVOLVED

1. United States Constitution, Amendment 1
(reproduced in Appendix).
2. United States Constitution, Amendment 4
(reproduced in Appendix).
3. United States Constitution, Amendment 5
(reproduced in Appendix).
4. United States Constitution, Amendment 9
(reproduced in Appendix).
5. United States Constitution, Amendment 14
(reproduced in Appendix).
6. 28 U.S.C. § 455
(reproduced in Appendix).
7. 28 U.S.C. § 1331, 1343 (1)-(3), 2201, 2202
(reproduced in Appendix).
8. 42 U.S.C. § 1983
(reproduced in Appendix).
9. 2nd Cir. R. § 0.14
(reproduced in Appendix).

STATEMENT OF THE CASE

The petitioners, National Committee and National Executive Committee of the National Caucus of Labor Committees ("NCLC"), filed a Civil Rights Complaint accompanied by sup-

porting affidavits, a Motion for Preliminary Injunction, and a Memorandum of Law in Support of Motion for a Preliminary Injunction in the United States District Court for the Southern District of New York on March 25, 1983.¹

The Complaint sought a permanent injunction against a New York County Grand Jury investigation of the printing and distribution of a pamphlet, "Profiles of the Times", as the investigation concerned petitioners. The complaint also sought a permanent injunction against other specified bad faith investigations conducted by the defendant New York County District Attorney in conjunction with private individuals and organizations and other law enforcement authorities against the NCLC political organization and its members. In addition, the Complaint sought a declaratory judgment that the specified law enforcement investigations were conducted in bad faith under color of state law and violated the constitutional rights of the NCLC and its members. (A 18-43).

The Motion for Preliminary Injunction sought to enjoin the enforcement of New York County Grand Jury subpoenas issued to NCLC members and employees of PMR Printing Company ("PMR") on November 16, 1982 and subsequently, to stay the return date of these subpoenas during the pendency of the federal action, and to likewise enjoin the issuance and enforcement of any new subpoenas to members of the NCLC.

On March 30, 1983, Petitioners requested, by Order to Show Cause, a hearing for a Temporary Restraining Order against enforcement of the subpoenas at issue. This application was in response to the New York County District Attorney's notification that he intended to call employees of PMR subpoenaed on November 16, 1982 before the Grand Jury on April 4, 1983. The hearing on this request was originally scheduled for April 4, 1983, but was rescheduled by the Court to April 8th, with

¹ The Complaint and some of the supporting affidavits are reproduced in the Appendix. The other documents are part of the Record below. Petitioners have requested the Court of Appeals to certify and transmit the Record to this Court.

the District Attorney rescheduling the appearance of the Grand Jury witnesses until after the hearing.

Oral argument was held before the Honorable Vincent L. Broderick on April 8, 1983, on petitioners' application for a temporary restraining order. After hearing arguments of counsel, Judge Broderick denied the request for a temporary restraining order. (A12-17) In addition, the Judge denied a preliminary injunction and dismissed petitioners' Complaint for failure to state a cause of action. (A12-17) Petitioners took an appeal of this decision to the Second Circuit Court of Appeals.

Prior to oral argument on petitioners' appeal to the Court of Appeals, petitioners moved for the Honorable George C. Pratt, Circuit Judge, to disqualify himself, pursuant to 28 U.S.C. Section 455, from the panel hearing the appeal. (A85-92) This motion was based on the fact that the petitioners had previously published numerous articles which were sharply critical of Judge Pratt and which questioned his integrity. Petitioners had campaigned and lobbied nationally for Judge Pratt's impeachment and to block his appointment to the Court of Appeals. After hearing argument, Judge Pratt refused to disqualify himself, and participated in the decision of the Court of Appeals. (A7-10) That decision affirmed the dismissal of petitioners' Complaint in a summary order. (A1-6)

Petitioners' Complaint resulted from a search conducted pursuant to a warrant about the premises of PMR, a printing company owned and managed by members of the NCLC, on November 16, 1982 by seventeen (17) individuals identifying themselves as detectives from the New York City Police Department. At the time of the search, twenty-three (23) individuals, constituting the entire day shift and management of PMR, and Barbara Boyd, a member of the legal staff of the NCLC, were subpoenaed to appear before the New York County Grand Jury investigating the printing and distribution of "Profiles of the Times". All subpoenas were made returnable at the same time and on the same day.

Jurisdiction for petitioners' Complaint in Federal District Court was based on 28 U.S.C. Sections 1331, 1343(1)-(3), 2201, and 2202.

Petitioners' Complaint alleges that the NCLC and its members are the targets of the New York County Grand Jury investigation concerning the printing and distribution of "Profiles of the Times".² It is alleged that the Grand Jury proceedings and other specified law enforcement actions have been brought in bad faith and for purposes of harassment, and to retaliate for and to deter the petitioners and their members from exercising various specified rights, including freedom of speech, press, and assembly, which are protected by the United States Constitution. The Grand Jury proceedings and other contemporaneous law enforcement investigations specified in the complaint are alleged to contravene, under color of state law, rights guaranteed the petitioners and their members under the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the Constitution. The Complaint alleges that petitioners will suffer irreparable harm as a result of defendants' unlawful and unconstitutional actions.

REASONS FOR GRANTING THE WRIT

I.

THE COURT OF APPEALS ERRED IN UPHOLDING THE DISTRICT COURT'S *SUA SPONTE* DISMISSAL OF A CIVIL RIGHTS COMPLAINT WHICH SOUGHT AN INJUNCTION AND DECLARATORY RELIEF AGAINST A STATE GRAND JURY INVESTIGATION AND WHICH CONTAINED NON-CONCLUSORY ALLEGATIONS THAT THE INVESTIGATION WAS BEING CONDUCTED BY THE DISTRICT ATTORNEY IN BAD FAITH AND TO RETALIATE AGAINST PETITIONERS FOR EXERCISING THEIR CONSTITUTIONAL RIGHTS.

² "Profiles of the Times" is a parody pamphlet resembling, in some respects, the book review section of the Sunday New York Times.

**A. The District Court Erred in Dismissing The Complaint
Sua Sponte Without Giving Petitioners Adequate Notice
Of The Contemplated Action and Without Affording Them
An Opportunity To Respond.**

The Second Circuit's opinion failed to discuss the petitioners' argument that the District Court committed procedural error in dismissing their Complaint. The hearing before Judge Broderick was concerned with petitioners' application for interim relief, and the only papers filed by the defendants were an affidavit and memorandum of law in opposition to petitioners' motion for a temporary restraining order. Defendants never filed a Rule 12(b)(6) motion to dismiss, and the District Court Judge did not inform petitioners that dismissal of the Complaint was a possibility until after oral argument, when he denied preliminary relief and dismissed the Complaint for failure to state a cause of action.

The Courts of Appeals have often been critical of *sua sponte* dismissals of complaints, and have scrutinized such dismissals carefully. See, e.g., *Lewis v. State of New York*, 547 F.2d 4, 5-6 (2nd Cir. 1976); *California Diversified Promotions, Inc. v. Musick*, 505 F.2d 278, 280-281 (9th Cir. 1974); *Literature, Inc. v. Quinn*, 482 F.2d 372, 374 (1st Cir. 1973). As the court stated in *Lewis v. State of New York*, *supra*, when a motion to dismiss for failure to state a claim is filed by the defendant pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the plaintiff receives notice of the challenge to the sufficiency of the Complaint, and has an opportunity to respond by seeking leave to amend or setting forth arguments supporting the validity of his claim. *Lewis*, *supra* at 5. This Court has noted the fundamental importance of adequate notice and an opportunity to be heard, *Anderson National Bank v. Lockett*, 321 U.S. 233, 246 (1944), and has cautioned against the premature dismissal of a complaint. *Bell v. Hood*, 327 U.S. 678, 681-683 (1946).

In the instant case, petitioners did not receive adequate notice that dismissal of the Complaint was contemplated, and had no opportunity to submit written argument in opposition to the

proposed dismissal.³ See *Dodd v. Spokane County*, 393 F.2d 330, 334 (9th Cir. 1968). Indeed, it has been held that such a *sua sponte* dismissal without adequate notice of the proposed action and an opportunity to address the issue may alone justify reversal. *Literature, Inc. v. Quinn*, 482 F.2d at 374. See also *Armstrong v. Rushing*, 352 F.2d 836, 837 (9th Cir. 1965).

The Court of Appeals should have closely scrutinized the District Court's action and the procedure it followed to determine if its dismissal of the Complaint was justified under all the circumstances. *California Diversified Promotions, Inc. v. Musick*, 505 F.2d at 280. Instead, the Second Circuit affirmed the dismissal in a brief summary order which did not consider the propriety of the procedure followed by the District Court. While the opinion of the Court of Appeals stated that a *sua sponte* dismissal should be scrutinized with the utmost care, (A-3) the brevity of the opinion indicates that the Court failed to give the issues the scrutiny they required.

B. The Allegations Of The Complaint Were Sufficient To State A Claim For Relief On The Ground That The State Grand Jury Investigation Was Being Conducted In Bad Faith And To Retaliate Against And To Deter Petitioners In The Exercise Of Their Constitutional Rights.

In upholding the dismissal of petitioners' Complaint for failure to state a claim, the Court of Appeals stated that there was no basis for suggesting that the petitioners were the targets of the grand jury investigation, and that their allegations as to bad faith and harassment were stated in "mere conclusory terms, without any factual support." (A-3). An examination of the Complaint, however, clearly demonstrates that the petitioners' allegations were sufficient to state a claim under established legal principles, and that the Court of Appeals was incorrect in ruling to the contrary.

This Court has stated that when the sufficiency of a complaint is at issue:

³ The memoranda filed by the petitioners in District Court dealt with the applications for a temporary restraining order and a preliminary injunction.

the accepted rule [is] that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

Conley v. Gibson, 355 U.S. 41, 45-46 (1957)

In a civil rights case under 42 U.S.C. Section 1983, the plaintiff must allege and prove that the defendant has deprived him of a federal right, and that in doing so the defendant was acting "under color of law." *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 150 (1970).

Petitioners' Complaint clearly meets these requirements. The Complaint alleges that the grand jury proceedings and other law enforcement investigations have been undertaken in bad faith by the defendants in retaliation for and to deter petitioners and their members from exercising certain specified constitutional rights, including freedom of speech, press, and assembly. This abridges petitioners' federal right to pursue their constitutional rights free from state interference or retaliation. *Wilson v. Thompson*, 593 F.2d 1375, 1385 (5th Cir. 1979). The defendants are the District Attorney and an Assistant District Attorney, respectively, of New York County, and their actions are sufficiently alleged to be under color of law.

This Court stated in *Conley v. Gibson*, 355 U.S. at 47: "the Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim." In fact, petitioners' Complaint goes beyond the minimum requirements of the federal rules, and does state with a great deal of specificity the facts underlying petitioners' claim that they are the targets of an investigation brought in bad faith and for purposes of harassment.

The Complaint specifies reports of confidential sources to Jeffrey Steinberg, a member of the NCLC. These reports to Steinberg which are detailed in the Complaint support the conclusion that the NCLC is the target of the grand jury inves-

tigation, that the proceedings were undertaken not for the purposes of obtaining valid convictions but solely for specified improper purposes directed against petitioners, and that the grand jury process is being utilized for purposes of generating information for civil lawsuits and other governmental investigations pursuant to a general plan of financially bleeding the NCLC.

In addition to these allegations, the Complaint sets forth additional facts which support petitioners' claims. These facts include prior dealings between the parties demonstrating animosity on the part of the defendants toward petitioners, hostile dealings between the petitioners and organizations and persons associated with defendant Morgenthau, the dubious nature of the alleged criminal violations, simultaneous investigative actions by state and federal authorities, and the fact that the search and the subpoenas were directed at the printer for a political organization which sustains itself by publishing and disseminating its views.

In considering a motion to dismiss, the allegations of the Complaint must be taken as true, *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). It is not up to the Court of Appeals at this stage to disbelieve the allegations and find that the petitioners are not targets. As to the allegations of bad faith, petitioners cannot be required to plead with any more specificity than they have done. Bad faith is a state of mind, and as such is rarely susceptible of direct proof, but must generally be proved by circumstantial evidence. *United States v. M.H. Bronson Distributing Co.*, 398 F.2d 929, 943 (6th Cir. 1968).

A plaintiff alleging bad faith on the part of a defendant should not be held to stringent standards at the pleading stage before any discovery is had, since the facts evidencing such bad faith will often be in the possession of the opponent. Cases—such as the instant one—in which a crucial issue involves motivation or intent are particularly inappropriate for summary disposition. See *Conrad v. Delta Air Lines, Inc.*, 494 F.2d 914, 918 (7th Cir. 1974); *Cross v. United States*, 336 F.2d 431, 433 (2nd Cir. 1964).

C. The Court Of Appeals Acted Contrary To Accepted Principles Of Law And Applicable Decisions Of This Court In Holding That Petitioners Would Not Be Entitled To Injunctive Relief Under Any Set Of Facts Which They Could Prove In Support Of The Allegations Of The Complaint.

As a basis for upholding the District Court's ruling, the Court of Appeals stated that the petitioners had made only conclusory allegations of irreparable harm, and that there was no factual basis for those allegations. (A-3). However, such a statement is unsupportable in light of the allegations of the Complaint and the relevant case law.

In *Younger v. Harris*, 401 U.S. 37 (1971), this Court discussed the concept of irreparable injury in the context of federal intervention in state criminal proceedings. *Younger* held that, absent extraordinary circumstances, bad faith or harassment in a state prosecution was a necessary prerequisite to the irreparable injury which must be shown in order to justify federal intervention in the state proceedings. 401 U.S. at 53-54.

Certain types of injury, in particular, the cost, anxiety, and inconvenience of having to defend against a single criminal prosecution, could not by themselves be considered 'irreparable' in the special legal sense of that term. *Younger, supra*, at 46.

The threat to a plaintiff's rights must be of the type that can not be eliminated by his defense against a single criminal prosecution.

In the instant case, petitioners allege in their Complaint that the New York Grand Jury investigation was instigated in bad faith to harass the petitioners because of their exercise of their constitutional rights, and to deter them in the exercise of those rights. It has been held that a showing of bad faith or harassment is equivalent to a showing of irreparable injury under *Younger v. Harris*. *Fitzgerald v. Peek*, 636 F.2d 943, 944 (5th Cir. 1981), *cert. denied*, 452 U.S. 916 (1981); *Shaw v. Garrison*, 467 F.2d 113, 120 (5th Cir. 1972), *cert. denied*, 409 U.S. 1024 (1972).

Irreparable injury independent of the bad faith prosecution need not be established. *Fitzgerald v. Peek*, *supra* at 944. The court in *Shaw* noted that there is a federal right to be free from bad faith prosecutions. *Shaw v. Garrison*, *supra* at 120.

In addition to their right to be free from bad faith prosecutions, petitioners have a federal right to pursue their constitutional rights free from state interference or retaliation. *Wilson v. Thompson*, 593 F.2d 1375, 1385 (5th Cir. 1979).

Petitioners allege in their Complaint that the motivating force behind the grand jury investigation is defendants' desire to retaliate and deter petitioners in the exercise of their First Amendment rights. The grand jury investigation is alleged to be part of a bad faith investigative plan by defendants. The plan involves the grand jury investigation of "Profiles of the Times" and contemporaneous law enforcement investigations and a defamatory publicity campaign based upon the law enforcement investigations. The bad faith law enforcement and publicity campaign will "financially bleed" and discredit the political organization, disrupt and sever relationships between the NCLC and law enforcement, intelligence and government news sources, disrupt the political organization's printing operation, "PMR", and destroy the social fabric of the NCLC by unlawful intimidation of individual members of the NCLC.

The threat to petitioners' federally protected rights cannot be eliminated, therefore, by their defense against a single criminal prosecution. The threatened injury to the NCLC is not dependent upon the outcome of any prosecution which might result from the grand jury proceedings. In fact, the injury does not even depend on the procurement of indictments against the petitioners or any member of their political organization.

Ealy v. Littlejohn, 569 F.2d 219 (5th Cir. 1978), demonstrates how a party can be threatened with irreparable harm by a grand jury which does not result in or was not ever intended to result in prosecution of the party.

Ealy involved grand jury investigation of the fatal shooting of a black youth by law enforcement officers in Mississippi. When

the grand jury failed to return indictments, members of the Marshall County United League circulated a leaflet attacking the local law enforcement investigation and accusing the District Attorney of improperly prosecuting the case before the grand jury. The grand jury was called back into session and grand jury subpoenas were issued to officers and members of the United League and for records and minutes of the League. The grand jury conducted an investigation into the origin of the leaflet in order to ascertain whether those responsible had personal knowledge of the facts of the shooting and it questioned League members about internal organizational affairs, financial affairs and the League's activities. The *Ealy* grand jury recommended in its final report that transcripts of the proceeding be released to the news media, the general public and specified law enforcement agencies.

The League then filed a Civil Rights action against the District Attorney, the County Attorney, and a judge, alleging that the grand jury inquiry into the League's activities was conducted in bad faith for purposes of harassing and intimidating the plaintiffs in violation of their First Amendment rights. An injunction was requested restraining defendants from interfering in the exercise of those rights, and from taking further action based on the grand jury investigation.

In reviewing the District Court's denial of relief, the Fifth Circuit initially noted that plaintiffs had a fundamental right to speak their minds free of unwanted governmental restraint. *Ealy, supra*, at 226. While the investigative powers of a grand jury are broad, the "First Amendment can serve as a limitation on the power of the grand jury to interfere with a witness' freedoms of association and expression." *Id.* at 227. The Court held that plaintiffs had suffered irreparable injury and would suffer further irreparable injury if an injunction did not issue, and reversed the District Court's decision denying relief. *Id.* at 235.

The instant situation parallels *Ealy* in several respects. Petitioners allege that, as in *Ealy*, the motivating force behind the decision to convene the grand jury was to harass the petitioners

in the exercise of their constitutional rights, including the rights of speech and association. In both cases, the plaintiffs are political organizations that incurred the animosity of the defendant law enforcement officials because of the exercise of their constitutional rights. Regardless of the outcome of the grand jury proceedings, petitioners will be irreparably harmed by the ongoing investigation, much as the plaintiffs in *Ealy* were harmed, unless an injunction is granted. By focusing on the argument that the petitioners have not been sufficiently threatened with prosecution, the Court of Appeals and the District Court ignored the real basis for petitioners' claim of irreparable injury.

In holding that the petitioners failed to sufficiently allege irreparable harm, the Second Circuit opinion fails to come to grips with the basic principles underlying *Younger v. Harris* and its progeny. The essential holding of *Younger* is that equitable principles do not permit a federal court to interfere with a state prosecution instituted in good faith, even if the statute which is being enforced is alleged to be unconstitutional. *Younger v. Harris*, 401 U.S. at 755.

However, this basic premise of *Younger* has no application when the state proceeding is instituted in bad faith. See *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 611 (1975). As the Fifth Circuit stated in *Wilson v. Thompson*, 593 F.2d at 1382, a suit to enjoin a good faith prosecution differs from a suit to enjoin a bad faith prosecution in that the plaintiff's federal right not to be subjected to a bad faith prosecution, or a prosecution brought for harassment purposes, cannot be vindicated by undergoing the prosecution. While *Younger* principles require that a person being prosecuted in good faith undergo the state prosecution and attempt to vindicate his federal rights in the state proceeding, such principles do not apply when the prosecution itself effects the constitutional violation. *Wilson supra*, at 1383.

In the present case, the very actions of the defendants in conducting the grand jury investigation,—as opposed to any indictments or convictions which might result,—constitutes the constitutional harm. As *Wilson* held, "irreparable injury is sufficiently established if the federal plaintiff demonstrates that the

state prosecution against him was brought in bad faith for the purpose of retaliating for or deterring the exercise of constitutionally protected rights." *Wilson v. Thompson*, 593 F.2d at 1383. While there is no prosecution in the instant case, logic dictates that the same principle should apply when a grand jury investigation is instituted in bad faith in order to retaliate for and deter the exercise of a party's constitutional rights.

Unlike the situation presented in *Younger*, petitioners' constitutional rights can not adequately be protected in the state proceeding. In the *Younger* situation, where the unconstitutionality of a state statute is alleged, the defendant can raise that constitutional issue in the state proceeding and thereby attempt to vindicate his federal rights. Thus, the defendant suffers no irreparable harm by being required to undergo a single prosecution brought in good faith. However, in the instant case the petitioners are unable to adequately protect and vindicate their federal rights in the same manner. Since the injury will result from the very existence of the grand jury investigation and the manner in which the investigation is being pursued by the defendants, the petitioners' rights will not be adequately protected by defending against any subsequent prosecution that arises out of the investigation. Since petitioners thus have no adequate opportunity to protect their federal rights in the state proceeding, they will be irreparably injured unless the federal courts intervene at this stage.

The notion of an adequate opportunity to present one's federal claims in the state proceeding is a basic premise of the *Younger* doctrine, *Judice v. Vail*, 430 U.S. 327, 337 (1977), and is inextricably intertwined with the question of irreparable harm in the present case. If a party is accorded an adequate opportunity to pursue constitutional claims in the ongoing state proceeding, then a federal court, applying equitable principles, will not interfere in the proceeding. However, where the state procedure is inadequate to protect the party's constitutional rights, such as in the instant case, irreparable harm may occur if the federal courts do not intervene in the state proceedings by way of injunction. In such a situation, consistent with *Younger* prin-

ciples, a federal court of equity may have a duty to act. See *Juidice v. Vail*, *supra* at 339 (Stevens, J. concurring).

Petitioners have no adequate remedy which they can pursue in the state proceedings. As discussed above, the nature of the threatened injury precludes petitioners from protecting their rights by waiting to be indicted and pursuing relief thereafter. Contrast, *Kaylor v. Fields*, 661 F.2d 1177, 1181 (8th Cir. 1981) (Plaintiff claimed that prosecutor disseminated accusations to press in attempt to deprive him of the right to an impartial jury panel in the event of prosecution. The Court held that if plaintiff was charged, he had ample means, including voir dire and a change of venue, to vindicate this right in state court).

Unless the defendants intend, ultimately, to indict the entire NCLC political association for the printing and distribution of "Profiles of the Times", petitioners will have no forum other than the instant lawsuit to pursue their claims.

The inadequacy of petitioners' state remedies is further demonstrated by what has already occurred in the New York state courts. As alleged in the Complaint, petitioners moved to intervene in state court and quash the grand jury subpoenas issued to members of the NCLC. However, the New York courts ruled that the political organization petitioners lacked standing to intervene or to quash the subpoenas. As a result, petitioners are unable to adequately raise in state court the issues of bad faith and harassment of the political organization which form the basis of the constitutional violation.

Nor can the petitioners' claims be adequately protected by the individuals who have been subpoenaed to testify before the grand jury. As this Court recognized in *United States v. Calandra*, 414 U.S. 338, 343-345 (1974), the scope of a grand jury's powers is far ranging, and a witness subpoenaed to testify before a grand jury is afforded few protections. In *In Re Grand Jury (Schmidt)*, 619 F.2d 1022, 1026 (3rd Cir. 1980), the Third Circuit recognized that in certain circumstances, claims of grand jury abuse may properly be brought by third parties who have not themselves been subjected to grand jury process, since otherwise their rights can not be adequately protected. In the

present case petitioners rights cannot be adequately protected. Petitioners were not permitted to intervene into the state court proceedings. The individuals subpoenaed cannot adequately protect the constitutional rights of the petitioners. Petitioners have clearly alleged sufficient facts to show that state remedies are inadequate and that they will suffer irreparable harm if the grand jury investigation is not enjoined.

In holding that petitioners' Complaint failed to state a cause of action, the Second Circuit quoted the statement from *Younger v. Harris* that "persons having no fears of state prosecution except those that are imaginary or speculative, are not to be accepted as appropriate plaintiffs in such cases." (A2-3). This statement by the Second Circuit clearly illustrates how the court below misconstrued the nature of petitioners' claim and failed to recognize that a grand jury investigation can abridge a party's constitutional rights without ever resulting in an indictment and prosecution.

The quoted portion of *Younger* relates to the claim of certain persons who felt threatened by the very existence of the allegedly unconstitutional statute and the pending prosecution against another, but who were not themselves threatened with any prosecution. *Younger*, 401 U.S. at 41-42. This has no applicability to petitioners' claims. Petitioners allege that their rights will be infringed by the very existence of the grand jury investigation and the manner in which it is being pursued, not by any prosecution which may result. In fact, petitioners fully expect that no valid indictments can be returned against the NCLC or against any NCLC members.

As the Fifth Circuit recognized in *Ealy v. Littlejohn*, *supra*, a grand jury investigation itself may abridge constitutionally protected rights and cause irreparable injury to individuals and organizations. In *In Re Grand Jury (Schmidt)*, 619 F.2d at 1026-1027, the Third Circuit elaborated an example of this principle. It noted that a political candidate's rights would be infringed by service of grand jury subpoenas upon his workers to discourage them from soliciting nominating petitions or election support.

The Second Circuit's opinion, however, seems to imply that only prosecution of the NCLC political organization itself could result in sufficient harm to sustain a civil rights injunctive action. The Second Circuit also seems to have reasoned that an organization which has not been subpoenaed to appear before a grand jury cannot be a target of the grand jury's investigation and that a party can not be harmed by a bad faith grand jury investigation unless it is threatened with indictment and prosecution. These premises are clearly incorrect yet they form the basis of the Second Circuit's affirmance of the dismissal of the Complaint. An organization can obviously be the target of an investigation without itself being subpoenaed or otherwise subjected to the grand jury's process. A political organization can clearly be irreparably harmed by a bad faith grand jury investigation without itself being threatened with indictment or prosecution.

II.

JUDGE PRATT ERRED IN REFUSING TO RECUSE HIMSELF ON THE GROUND THAT HIS IMPARTIALITY MIGHT REASONABLY BE QUESTIONED BECAUSE OF VITRIOLIC ATTACKS ON HIS COMPETENCY BY PETITIONERS PRIOR TO HIS APPOINTMENT TO THE COURT OF APPEALS

Petitioners filed their motion to recuse Judge Pratt immediately upon becoming aware that he would be sitting on the panel which would hear their appeal. Judge Pratt ruled on the motion in open court prior to hearing oral argument on the merits, and refused to recuse himself from sitting on the appeal. (A7-9). By written order dated October 3, 1983, the motion was denied "for reasons placed on the record at the beginning of oral argument." (A4-6). Judge Pratt participated in and signed the Second Circuit's opinion affirming the dismissal of petitioners' Complaint.

28 U.S.C. Section 455(a) provides that a judge "*shall* disqualify himself in any proceeding in which his impartiality might

reasonably be questioned." (emphasis supplied). The standard is an objective, rather than a subjective one. *Potashnick v. Port City Construction Co.*, 609 F.2d 1101, 1111 (5th Cir. 1980), *cert. denied*, 449 U.S. 820 (1980).

The issue is not whether the judge is impartial in fact, but rather, whether a reasonable man might question his impartiality under all circumstances. *United States v. Gigax*, 605 F. 2d 507, 511 (10th Cir. 1979).

A judge is required to exercise his discretion in favor of disqualification if he has any question about the propriety of his sitting in a particular case. *Potashnick v. Port City Construction Co.*, *supra* at 1112.

In their recusal motion, petitioners stated that Lyndon LaRouche and other members of the NCLC published numerous articles which attacked Judge Pratt for his handling of the "ABSCAM" corruption cases when he was a United States District Court Judge, and which disputed Judge Pratt's integrity both personally and judicially and called for his removal from the bench. (A85-92). Petitioners publicly campaigned for Judge Pratt's impeachment, and vigorously and publicly opposed his appointment to the Second Circuit Court of Appeals. The facts upon which petitioners based their recusal motion were set forth in detail in an affidavit filed together with the motion, and copies of articles published and materials circulated which attacked Judge Pratt were also attached and filed with the Court. (A85-92).

Petitioners' motion, taken together with the attached affidavit and exhibits, demonstrates that recusal of Judge Pratt was required by 28 U.S.C. Section 455(a). The Fifth Circuit court noted in *Potashnick*:

Because 28 U.S.C. § 455(a) focuses on the appearance of impartiality, as opposed to the existence in fact of any bias or prejudice, a judge faced with a potential ground for disqualification ought to consider how his participation in a given case looks to the average person on the street.

Potashnick v. Port City Construction Co., 609 F.2d at 1111.

Certainly, "the average person on the street", having been made aware that articles published by the petitioners accused Judge Pratt of having "introduced abhorrent Nazi criminal law precedents into the American legal system" and referred to "the irrationalist rantings of Judge Pratt", would believe that Judge Pratt could not impartially adjudicate matters involving the petitioners. As *Potashnick* noted, the objective standard of Section 455(a) replaced the subjective standard of the prior statute. The purpose of the new rule was "to promote the public's confidence in the impartiality and integrity of the judicial process. . . ." *Potashnick v. Port City Construction Co.*, *supra* at 1111. See *United States v. Camden*, 545 F.2d 257, 265 (1st Cir. 1976), *cert. denied*, 430 U.S. 909 (1977); *Spires v. Hearst Corp.*, 420 F.Supp. 304, 307 (C.D. Cal. 1976) (judge disqualified himself because of complimentary article published about him by the defendant).

Recusal by Judge Pratt was mandated even if he believed as he stated on the record, (A8-9), that he could impartially adjudicate the appeal. The statute's concern is the objective appearance of impartiality. *Blizzard v. Frechette*, 601 F.2d 1217, 1220 (1st Cir. 1979) (recusal may be required "even though the judge himself may subjectively be confident of his ability to be even-handed").

This concern with the appearance of impartiality "stems from the recognized need for an unimpeachable judicial system in which the public has unwavering confidence. . . . Any question of a judge's impartiality threatens the purity of the judicial process and its institutions." *Potashnick v. Port City Construction Co.*, *supra*, at 1111.

As this Court has noted, the appearance of fairness and impartiality is intertwined with considerations of due process:

A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of

law has always endeavored to prevent even the probability of unfairness. . . . [T]o perform its high function in the best way "justice must satisfy the appearance of justice".

In re Murchison, 349 U.S. 133, 136 (1955) (citation omitted).

For this reason, a judge must err on the side of caution and disqualify himself in a questionable case. *Roberts v. Bailer*, 625 F.2d 125, 129 (6th Cir. 1980); *Potashnick v. Port City Construction Co.*, *supra* at 1112.

Judge Pratt's recusal at the time of oral argument would not have delayed oral argument or a determination of the appeal, since the Second Circuit's rules provide that two judges shall constitute a quorum. 2nd Cir. R. § 0.14. Thus, the principles of 28 U.S.C. Section 455 need not have bowed to any considerations of necessity or convenience. *Contrast Pilla v. American Bar Association*, 542 F.2d 56, (8th Cir. 1976).

Since Judge Pratt refused to recuse himself, this Court should review his decision by writ of certiorari. Unless review is granted, no tribunal will have reviewed Judge Pratt's ruling refusing to disqualify himself. In view of the fact that the standard of Section 455(a) is an objective one, such a result is not warranted. Since the appearance of impartiality is the critical factor, it is important that this court review the objective facts and determine for itself the propriety of Judge Pratt's decision. Judge Pratt may have felt that he could be impartial in adjudicating the appeal. This is not, however, the relevant test.

The issue is not affected by the fact that two unchallenged judges joined Judge Pratt and ruled against the petitioners on the merits of their appeal. If Judge Pratt was required to disqualify himself, then he was incompetent to sit on the appeal, and the decision of the Second Circuit was not rendered by a competent court and must be reversed. *Moran v. Dillingham*, 174 U.S. 153, 158 (1899); *American Construction Co. v. Jacksonville, T. & K. Ry. Co.*, 148 U.S. 372, 387 (1893).

CONCLUSION

For all of the foregoing reasons the Writ of Certiorari to the United States Court of Appeals for the Second Circuit should be granted.

Respectfully submitted,

MAYER MORGANROTH
24901 Northwestern Highway
Southfield Michigan 48075

ODIN P. ANDERSON
One Longfellow Place
Boston, Massachusetts 02114

Attorneys for Petitioners

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

NATIONAL COMMITTEE
and NATIONAL EXECUTIVE COMMITTEE OF THE
NATIONAL CAUCUS OF LABOR COMMITTEES

Petitioners,

vs.

ROBERT MORGENTHAU, DISTRICT ATTORNEY OF NEW YORK
COUNTY and HAROLD WILSON, ASSISTANT DISTRICT
ATTORNEY OF NEW YORK COUNTY,

Respondents.

APPENDIX TO PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

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**DECISION AND ORDER OF THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT
AFFIRMING DISMISSAL OF THE COMPLAINT**

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 11th day of October one thousand nine hundred and eighty-three.

Present:

HONORABLE RICHARD J. CARDAMONE
Circuit Judge

HONORABLE LAWRENCE W. PIERCE
Circuit Judge

HONORABLE GEORGE C. PRATT
Circuit Judge

Filed October 11, 1983. United States Court of Appeals for the Second Circuit. A. Daniel Fusaro, Clerk.

National Committee and National Executive Committee of the National Caucus of Labor Committees,

Plaintiffs-Appellants,

—against—

Robert Morgenthau, District Attorney of New York County and Harold Wilson, Assistant District Attorney of New York County,

Defendants-Appellees.

ORDER

Docket No.
83-7326

Appeal from the United States District Court for the Southern District of New York.

Plaintiffs National Committee and National Executive Committee of the National Caucus of Labor Committees ("NCLC") appeal from an order of the United States District Court for the Southern District of New York, Vincent L. Broderick, *Judge*, denying plaintiffs' motions for a temporary restraining order and a preliminary injunction and dismissing their complaint for failure to state a claim. The NCLC now contends that its complaint was sufficient to state a claim and seeks remand for a hearing on the merits.

It is well settled that a complaint is subject to dismissal if it appears to a certainty no relief can be granted under any set of facts that can be proved in support of its allegations. *Conley v. Gibson*, 355 U.S. 41, 45 (1957). *See also Koch v. Yunich*, 533 F.2d 80, 85 (2d Cir. 1976) ("Complaints relying on the civil rights statutes are plainly insufficient unless they contain some specific allegations of fact indicating a deprivation of civil rights, rather than state simple conclusions."). After examining the complaint and supporting affidavits, we reject appellants' contention and find that the district court properly dismissed under Federal Rule of Civil Procedure 12(b)(6).

In order to obtain an injunction against the New York County Grand Jury investigation, appellants must show "(a) irreparable harm and (b) either (1) likelihood of success on the merits or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief." *Jackson Dairy, Inc. v. H.P. Hood & Sons, Inc.*, 596 F.2d 70, 72 (2d Cir. 1979). First, with respect to the showing of irreparable harm, appellants have made only conclusory allegations that the investigation "will cause . . . irreparable harm and function solely to chill plaintiffs in the exercise of their Constitutional rights." There is no indication, in either the complaint or supporting affidavits, of a factual basis for these allegations.

In addition, appellants' complaint fails to state a cause of action. As the Supreme Court has stated, "persons having no fears of state prosecution except those that are imaginary or speculative, are not to be accepted as appropriate plaintiffs in

such cases." *Younger v. Harris*, 401 U.S. 37, 42 (1971). There is no basis, in the case at bar, for suggesting that appellants are the targets of the investigation; in fact, neither has ever been subpoenaed. Moreover, appellants' allegations that the investigation was brought in bad faith and for purposes of harassment are stated in mere conclusory terms, without any factual support.

We acknowledge that, under the *Conley v. Gibson* standard, a *sua sponte* dismissal under Rule 12(b)(6) should be scrutinized with the utmost care. Even under liberal pleading rules, however, the complaint is clearly insufficient. No matter what set of facts the appellants may ultimately prove in support of its allegations, we believe that it will not suffice to satisfy the usual equitable tests. Accordingly, this Court cannot find any reason for interfering with what appears to be a legitimate and properly conducted state grand jury proceeding.

The order dismissing plaintiffs' complaint is affirmed.

/s/ _____
Richard J. Cardamone, U.S.C.J.

/s/ _____
Lawrence W. Pierce, U.S.C.J.

/s/ _____
George C. Pratt, U.S.C.J.

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

NOTICE OF MOTION AND SHORT FORM ORDER OF
CIRCUIT JUDGE GEORGE C. PRATT DENYING
MOTION FOR RECUSAL

PAGE 1

Second Circuit Rule 27(a) governing use of this
form is reprinted on reverse of Page 2. Note
requirement that supporting affidavits be attached.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NATIONAL COMMITTEE, et ano.

Plaintiffs-Appellants

vs.

ROBERT MORGENTHAU, et ano.

Use short title

Defendants-Appellees.

Docket Number: 83-7326

NOTICE OF MOTION

state type of motion

for Recusal of Honorable George Pratt, Circuit Judge

MOTION BY: *(Name and tel. no. of law firm and of attorney
in charge of case)*

ODIN ANDERSON, Attorney for Plaintiffs-Appellants

617-720-1800

Has consent of opposing counsel:

A. been sought?

☐ Yes ☒ No

B. been obtained?

☐ Yes ☒ No

Has service been effected?

☐ Yes ☒ No

Is oral argument desired?

☐ Yes ☒ No

(Substantive motions only)

Requested return date:

(See Second Circuit Rule 27(b))

10/3/83

Has argument date of appeal been set:

A. by scheduling order?

☒ Yes ☐ No

B. by firm date of argument notice?

☒ Yes ☐ No

C. If Yes, enter date: 10/3/83

Judge or agency whose order is being appealed:
 Vincent Broderick, U.S.D.J.
 Southern District of New York

OPPOSING COUNSEL: *(Name and tel. no. of law firm and
 of attorney in charge of case)*

DONALD J. SIEWART, Attorney for Defendants-Appellees
 212-553-9000

**EMERGENCY MOTIONS, MOTIONS FOR STAYS &
 INJUNCTIONS PENDING APPEAL**

Has request for relief been made below? ☐ Yes ☐ No
(See F.R.A.P. Rule 8)

Would expedited appeal eliminate need for
 this motion? ☐ Yes ☐ No

If No, explain why not:

Will the parties agree to maintain the status ☐ Yes ☐ No
 quo until the motion is heard?

Brief statement of the relief requested:

Recusal of Honorable George C. Pratt, Circuit Judge, from hear-
 ing oral argument and from any further proceedings on this
 appeal pursuant to 28 USC 455(a) and 455(b)

Complete Page 2 of This Form

By: *(Signature of* Appearing Appellant or Petitioner:
attorney) for: *(Name of* ☒ Plaintiff ☐ Defendant
 party) Appellee or Respondent:
 ☐ Plaintiff ☐ Defendant

National Committee, et ano.

Signed name must
 be printed beneath
ODIN ANDERSON

Date
10/2/83

ORDER

Kindly leave this space blank

IT IS HEREBY ORDERED that the motion, for reasons placed on the record at the beginning of oral argument be and it hereby is denied

FILED OCTOBER 3, 1983 UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

10/3/83

Date

/s/

George C. Pratt

Circuit Judge

DECISION OF CIRCUIT JUDGE GEORGE C. PRATT
DENYING MOTION FOR RECUSAL

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NATIONAL COMMITTEE and
NATIONAL EXECUTIVE COMMITTEE OF
THE NATIONAL CAUCUS OF LABOR
COMMITTEES,

Plaintiffs-Appellants,

-against-

83-KP-7326

ROBERT MORGENTHAU, District Attorney
of New York County and HAROLD
WILSON, Assistant District Attorney of
New York County

Defendants-Appellees.

BEFORE: HON. LAWRENCE W. PIERCE,
HON. GEORGE C. PRATT,
HON. RICHARD J. CARDAMONE,

EXCERPT FROM PROCEEDING HELD OCTOBER 3, 1983

* * *

APPEARANCES:

ATTORNEYS FOR PLAINTIFFS-APPELLANTS

ODIN P. ANDERSON, Esq.
One Longfellow Place
Boston, Massachusetts 02114

ROBERT ROSSI, Esq.

ATTORNEY FOR DEFENDANTS-APPELLEES

DONALD SIEWART, Esq.

* * *

THE COURT: We have a motion addressed to Judge Pratt with
respect to a motion made by the Plaintiffs-Appellants.

I believe you made the motion addressed to Judge Pratt?

MR. ANDERSON: May it please the Court, my name is Odin Phillips Anderson. I am co-counsel with Robert Rossi for the Plaintiffs-Appellants, National Committee.

With the permission of the Court, Mr. Rossi will argue the appeal on the sheet, although his name doesn't appear on the brief. I, as Counsel on the brief, have been ill for a substantial period of time and have been unable to prepare for oral argument.

And so I address simply the motion filed this morning and served on the District Attorney's Office, directed to the recusal of Justice Pratt.

THE COURT: That you — you — Are you going to address that, Mr. —

MR. ANDERSON: I see no reason to address it further. I think it speaks for itself, except to say that the motion is brought pursuant to 28 USC 455 Section A and B1.

JUDGE PRATT: I was given the motion papers this morning. I read page 1 of the form and page 2 of the form.

Page 2 sets forth the factual basis for the motion, which says that Plaintiffs-Appellants have published numerous articles sharply critical of me and questioning my integrity. And they had campaigned and lobbied nationally for my impeachment and to block my appointment to this Court, all arising out of my conduct of Abscam Trials while I was a District Judge.

This is the first I had heard of any of this. I flipped through the next papers, and I see that there are some articles there which I have not read. So I am not influenced by what is in the articles.

I do not feel, in any way, uncomfortable about sitting on the case. When I received it in preparation for the argument this morning, I had no recognition of who the Plaintiffs-Appellants were. They are totally unknown to me, other than as participants in this litigation. So I see no reason to recuse myself.

I was not given copies of articles written by the Plaintiffs-Appellants that had anything to do with me in the past. I was

not aware that they had opposed, unsuccessfully opposed, my appointment to this bench.

I hold no ill will towards them. It is a free country. Lots of people have said lots of unfavorable things about me. Very few have said a few favorable things. I feel I am perfectly able to handle the case on the merits and I deny the motion.

* * *

I hereby certify that the foregoing is a true and accurate transcript of the taperecording.

/s/ Judith Roman
JUDITH ROMAN — HEAR-
ING REPORTER

**ORDER AND DECISION OF VINCENT L. BRODERICK,
U.S.D.J., DENYING TEMPORARY AND PRELIMINARY
INJUNCTIVE RELIEF AND DISMISSING THE
COMPLAINT**

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

_____X	
NATIONAL COMMITTEE, et al.,	83 Civ. 2338 (VLB)
Plaintiffs,	ORDER
-against-	U.S. DISTRICT
	COURT
ROBERT M. MORGENTHAU, et al.,	FILED
Defendants.	APRIL 14, 1983
_____X	S.D. OF N.Y.

VINCENT L. BRODERICK, U.S.D.J.

For reasons set forth on the record at argument on April 8, 1983, plaintiff's motion for a temporary restraining order and preliminary injunction is denied, and the complaint is dismissed.

SO ORDERED.

/s/

Vincent L. Broderick, U.S.D.J.

Dated: New York, New York
April 13, 1983

MICROFILM APRIL 14, 1983

Copies Mailed to Counsel of Record _____

A TRUE COPY
RAYMOND BURGHARDT
By Freeman

Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATIONAL COMMITTEE AND
NATIONAL EXECUTIVE COMMITTEE
OF THE NATIONAL CAUCUS OF
LABOR COMMITTEES,

Plaintiffs,

-against-

83 Civ. 2338

ROBERT MORGENTHAU, District
Attorney of New York County, and
HAROLD WILSON, Assistant District
Attorney of New York County

Defendants.

April 8, 1983
4:30 p.m.

BEFORE:

HON. VINCENT L. BRODERICK,

District Judge

APPEARANCES:

ODIN P. ANDERSON, ESQ.,
Attorney for Plaintiffs

HAROLD WILSON, A.D.A., ESQ.,
Attorney for Defendants

(Recess)

(Open court)

THE COURT: The first question which must be addressed is that of the standing of the plaintiff. While this is something which would be subject to re-examination as more facts develop, I find for the purposes of the particular application which has been made for a temporary restraining order and a preliminary injunction that the allegations of the complaint provide a basis to find that the plaintiff can bring this action.

I have reviewed in the colloquy with counsel the thrust of the allegations as I see them and the status of the grand jury investigation. I do not find on the basis of what is before me any warrant to interfere with the lawful functioning of the grand jury.

The fact of the printing and the attempted distribution of the publication the Profiles of the Times is apparently not in dispute. It is not in dispute that the New York District Attorney's office acting upon the complaint of a party directly injured by that publication was investigating the circumstances of that situation. This is an entirely appropriate function for a District Attorney.

The complaint in this matter is, as I said during the earlier colloquy, an exhaustive complaint. It covers the activities of various entities in various parts of the world over an extended period of time. The New York District Attorney's office and the grand jury is operating in the matter before me on a much more finite basis. It is investigating allegations that crimes were committed within its jurisdiction.

There is not before me any suggestion that the persons subpoenaed were not present at the premises, the press at the time that the search warrant was executed.

Questions that were raised in state court with respect to the propriety of the actual preparation of subpoenas by police officers on instructions from the District Attorney are not before me. That is a matter of state law. It would be a highly unusual

and, in my judgment, highly improper step for this court to interfere with the District Attorney in the exercise of its functions and to interfere with the grand jury in the exercise of its functions.

I have found that for the purposes of this application, the plaintiff has standing.

I have further found, however, that the plaintiff has made no showing of probable irreparable injury. The investigation that is going on is a grand jury investigation. It is one that may or may not result in the bringing of charges of criminal activity against one or more people. There is certainly no evidence before me at the present time that indicates that any of those grand jury subpoenas were directed to members of the plaintiff core members and, even if they had been, on the circumstances that are before me, it would have been quite appropriate to serve such subpoenas if those persons were involved or thought to be involved in an activity that was being investigated.

I have considered the various cases in which interference by a federal court with law enforcement activity has been upheld and I do not see how any of those cases pertain to the situation before me. It would be an unhealthy situation, indeed, in my judgment, if the federal court, except in extremely unusual circumstances, interfered with a state district attorney's office and with a grand jury in the investigation of possible crime.

In analyzing the complaint and in accepting as true for purposes of this application the allegations of that complaint, I find nothing in it that suggests any basis for intervention by this court. The complaint, as I have already mentioned, ranges widely. It covers a vast period of time and it covers activities in various areas of the globe. The very volume of the allegations in the complaint points up, in my judgment, the sparsity of those allegations which relate in any way to the District Attorney's office or which relate in any way to the investigation which is currently under way. This is not a situation where the District Attorney is conducting an investigation where there has been no wrongdoing and where there has been no complaint about wrongdoing. There has been wrongdoing in that a publication

has been circulated under false pretenses and there has been a complaint about that wrongdoing.

I can envision no untoward consequences to the plaintiff in this action by that investigation continuing and I can see, therefore, no basis upon which preliminary relief would be justified.

There is, in this case, it seems to me, a convergence of the relief that is asked for in this complaint—a temporary restraining order, preliminary injunction and permanent injunction—they are all asked with respect to this investigation and other investigations by the District Attorney's office and yet this, I think, is the only investigation which is complained about in the complaint and given this disposition of the application for a temporary restraining order and preliminary injunction, it seems to me that it will be appropriate at this time to dismiss the complaint.

Yes, sir.

MR. ANDERSON: Would your Honor consider taking less drastic action than dismissing the complaint at this stage and, excepting as we must your Honor's denial for our request for a temporary restraining order, would your Honor simply take action on that and deny our request for a temporary restraining order which would obviously not in any way impede the grand jury from going forward in its ordinary course?

THE COURT: How are you injured, Mr. Anderson? Because you undoubtedly will appeal my ruling and if you do appeal and I am reversed, the whole matter will be reinstated including the complaint.

MR. ANDERSON: Rather than following that route, your Honor, I am suggesting there might be another route equally applicable without any of the concerns your Honor has mentioned of interfering with, as your Honor characterized, the legitimate investigatorial powers of the grand jury.

I would ask your Honor to deny our request, if you will, for a temporary restraining order but schedule, without in any way impacting the grand jury at this stage a hearing on a motion for

a preliminary injunction which evidence could be taken to allow us to support further and meet the burdens that your Honor has suggested we have not made a sufficient showing of at this stage?

THE COURT: No, I will not do that at this stage. I will not entertain an application for a preliminary injunction at this stage.

Mr. Anderson, your complaint is directed to the present investigative activity of the New York District Attorney's office and if you don't receive relief now, which I have denied you, I find it hard to see how you could receive it in the future?

MR. ANDERSON: Well, maybe I'm an optimist, your Honor? I have a feeling that in fact if evidence were presented by way of live testimony that an entirely different pall might be cast on this—

THE COURT: This is a part of my ruling. I will not at this point conduct an investigation into the propriety of the ongoing grand jury investigation and I cannot see how the passage of time would change that. It may be at some time the grand jury will take action and then it would seem to me you might have a different complaint.

If you can tell me some reason why I should not dismiss the complaint, I certainly will consider it, but I can't see a reason not to dismiss it and I don't really see how you are adversely affected by the dismissal?

MR. ANDERSON: Without quarreling your Honor's findings of fact as to our failure to demonstrate probable irreparable injury, I would have to quarrel with your Honor's factual findings. I don't think that's appropriate. I have a different point of view suffice it to say.

It is my feeling, your Honor, that if your Honor is concerned—and I can understand how very difficult it must be for a federal jurist to be asked to take an action which directly would affect a state proceeding and an ongoing investigation.

If your Honor's determination at this stage is, as I understand it to be, that while we do have standing, although you didn't

enunciate the particular grounds upon which you predicated that determination, we do have standing, we have failed to demonstrate at least one of the criteria, the likelihood of irreparable harm, then I would ask your Honor simply to, if you will, split the apple. You don't want to interfere with the state proceeding at this stage, fine, we have not made a sufficient showing. Give us an opportunity by way of the taking of evidence without in any way stalling, staying or enjoining or restraining the investigation in its current stage to allow us to schedule a hearing on a preliminary injunction. I don't think that certainly hurts the State of New York. It preserves this as a live controversy which I believe is the most appropriate posture for it to be in and would give us the opportunity to meet the burden which your Honor suggests we have not at this stage met. It is essentially as simple as that.

THE COURT: Mr. Wilson, do you have any view?

MR. WILSON: Your Honor, I think the court's observation that the relief requested by the plaintiff, the request for the TRO, the preliminary injunction, the declaratory judgment and permanent injunction, they do converge together and unless the court is prepared to conduct a hearing which would be really nothing more than an investigation into the bona fides of the grand jury investigation, I agree with your Honor's assessment that the appropriate—

THE COURT: I didn't expect you to disagree.

MR. WILSON: The appropriate adjudication is one of dismissal. I think the court has said that if the grand jury would take any kind of affirmative action that might open up some other avenue for the complainants to recommence a complaint. But I don't have any dissent to make with the court's finding, your Honor.

THE COURT: Mr. Anderson, it seems to me that my finding is that while for the purposes of this motion I have found that you had standing, your entire complaint here is that an improper investigation is going on and that you have been irreparably injured. I am finding that there has not been a showing

that the investigation is improper. I then went on and made a finding on irreparable harm with the thought that if the Court of Appeals found I was wrong on the finding preliminary to that, that it would also have my finding with respect to irreparable harm in the event that I was wrong, but ultimately my finding is that the allegations in your complaint do not state a cause of action and I dismiss the complaint.

Thank you, gentlemen.

(Record closed)

COMPLAINT

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**NATIONAL COMMITTEE and NATIONAL EXECUTIVE
COMMITTEE OF THE NATIONAL CAUCUS OF LABOR
COMMITTEES,**

Plaintiffs,

vs.

**ROBERT MORGENTHAU, District Attorney of
New York County and HAROLD WILSON,
Assistant District Attorney of New York County,**

Defendants.

Plaintiffs, by their undersigned attorney, for their complaint against the defendants, allege as follows:

PRELIMINARY STATEMENT

1. This is a complaint for declaratory relief and preliminary and permanent injunctive relief against the defendants who have instituted Grand Jury proceedings and other law enforcement investigations in which the political organization, the National Caucus of Labor Committees and its members, are the targets of investigation. Plaintiffs, the governing bodies of the National Caucus of Labor Committees ("NCLC"), allege that the Grand Jury proceedings and other law enforcement investigative actions undertaken by the defendants against the NCLC and its members are brought in bad faith, for purposes of harassment and without a reasonable possibility of success. The Grand Jury proceedings and other law enforcement investigations have been undertaken by the defendants in retaliation for and to deter plaintiff political organization and its members from

exercising their constitutionally protected rights to freedom of speech and of the press, to peacefully assemble and to freely associate, to petition the government for redress of their grievances, to register to vote and to vote, and to otherwise achieve the full rights of American citizenship by fully and equally participating in the democratic processes of our social and political system. Were it not for this impermissible motive, the instant Grand Jury proceedings and investigations would not be brought.

The Grand Jury proceedings and investigations of the NCLC and its members by the defendants are designed to, have in fact and will contravene, under color of state law, rights guaranteed to the political organization and its members under the First, Fifth, Ninth and Fourteenth Amendments to the United States Constitution. Defendants have conspired under color of state law to unlawfully prosecute plaintiffs for their private ends and purposes. The instant Grand Jury is also without subject matter jurisdiction and all actions of the defendants complained of herein are *ultra vires* and without authority in law.

The District Attorney and the Assistant District Attorney are also abusing the Grand Jury process by presenting the results of their investigations to unauthorized law enforcement personnel and private individuals who are political opponents of the NCLC. Some of these individuals have been or are private litigants in suits involving the NCLC. These individuals and others plan to utilize information developed from the instant Grand Jury proceedings and investigations in civil proceedings involving the NCLC. The defendants are fully aware of the political animus and unlawful motives of the NCLC's political opponents, share this political animus and are affirmatively and fully cooperating in this use of the law enforcement machinery of the State of New York for the private litigative and political advantage of the NCLC's political opponents.

Without the intervention of this Court, plaintiffs have suffered and will continue to suffer irreparable harm as a result of defendants' bad faith actions, under color of state law, retaliating

for plaintiffs' exercise of their First Amendment and other Constitutional rights.

JURISDICTION

2. This action arises under the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution, 42 U.S.C. 1983 and 42 U.S.C. 1988. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1331, 28 U.S.C. 1343 (1)-(3), and 28 U.S.C. 2201 and 2202.

PARTIES

A. Plaintiffs.

3. Plaintiffs are the governing bodies of the National Caucus of Labor Committees. The NCLC is a political organization founded by Lyndon H. LaRouche, Jr. in 1968. The NCLC has its principal offices at New York, New York. It is an unincorporated political association. The National Executive Committee of the NCLC is composed of 16 individuals and is responsible for formulating and effecting the political policies and programs of the organization. The National Committee of the NCLC is composed of 26 individuals and is responsible for formulating and effecting the policies and programs of the organization through designated areas of organizational responsibility.

4. As is set forth fully below, the National Caucus of Labor Committees political organization is the target of the instant Grand Jury proceedings and investigations. Nine members of the NCLC have been subpoenaed to appear before the Grand Jury and fifteen employees of a printing company which is managed by members of the NCLC have been similarly subpoenaed to appear before the Grand Jury.

5. Since 1971 the NCLC has campaigned nationally and internationally for national and international monetary reforms and accompanying policies of advanced technology and basic

scientific development as the only effective solution to the depression conditions now permeating the world economy. The NCLC has concretely specified programs for the most rapid and capital intensive development of the Third World by the advanced sector as the only means for preventing economic genocide in the Third World while reviving the dying industrial economies and scientific traditions of the advanced sector through such a project.

6. In its campaigns to implement this program, the NCLC has politically opposed individuals and organizations whose programs and actions are centered in the philosophies of Neo-Malthusianism, environmentalism and British philosophical radicalism of both the left and right wing varieties. The NCLC locates the authors and beneficiaries of these political movements in an identifiable oligarchical grouping of financiers whose goal is to preserve their power through what they view as an inevitable world financial collapse while substituting a feudal and colonialist structure of societies for the present system of sovereign nation states. A corollary result of the NCLC's specific monetary reform proposals would be the bankruptcy of these financial interests.

7. Members of the NCLC have been and are associated with initiating and supporting other organizations which function to present and propagate ideas and issues of political interest to the NCLC to the American public. The Fusion Energy Foundation was initiated by Lyndon LaRouche in 1974 to promote scientific studies of fusion energy development, advanced nuclear energy development and associated industrialization policies. The National Anti-Drug Coalition was founded in 1978 to campaign for drug enforcement policies and legislation directed at the international criminal elements and financial institutions directly involved in the drug economy and the promotion of drug use and the drug sub-culture. The National Democratic Policy Committee was founded in 1980 as a political action committee within the Democratic Party and campaigns for candidates for public office who endorse or support the economic, scientific, cultural and political policies developed by members of the NCLC.

8. Some members of the NCLC are also involved in publishing a weekly review of world political and strategic events, the Executive Intelligence Review, and a bi-weekly newspaper, New Solidarity. A monthly newsletter, Investigative Leads, addressed to the problems of international terrorism, drug enforcement and other intelligence issues is also published by members of the NCLC and directed primarily to a readership in the law enforcement and intelligence communities.

9. A substantial proportion of the NCLC membership is directly involved on a day to day basis in news gathering and publication activities. Sales of publications authored by members of the NCLC constitute the means of subsistence for members of the political organization and for continued publication and dissemination of the political analyses and ideas associated with the NCLC.

10. Since 1973 the NCLC has presented in depth investigative reports and analyses to an international audience concerning the individuals and organizations controlling international terrorist phenomena and the drug trade. The NCLC has also comprehensively reported on the geopolitical and military strategies and cultural designs of the oligarchical financial faction which presently exercises control over world monetary policy. The NCLC has consistently sought to become the primary alternative private intelligence resource organization for governments and political policy factions and has designed its investigative and publication activities accordingly. In the course of such activities, NCLC members have, necessarily, developed many confidential news sources in the intelligence, law enforcement, and governmental sectors of several countries.

11. In the Summer of 1982, Lyndon LaRouche began circulating a major policy document to the nations of the Third World entitled "Operation Juarez". The document calls for the formation of a "debtors' cartel" in the Third World. The debtors' cartel would enforce the demands of developing sector for massive industrialization and development projects upon the advanced sector by utilizing the cumulative debt of the Third World as a "weapon" for negotiation with the advanced sector rather than a

nation by nation liability. The cumulative debt of the Third World presently threatens the entire structure of the international monetary system. LaRouche's proposal that the Third World propose that the advanced sector undergo a monetary reorganization favoring its development or face a unilateral declaration of moratoriums on all outstanding debt to the advanced sector, has therefore been characterized as the "debt bomb" proposal.

12. Under the program put forward in Operation Juarez, American and international finances would be returned to the gold standard, and international monetary and credit policies would be absolutely biased toward policies of technological and industrial development in the Third World sector. Speculative financial operations would cease to be the major phenomena in the world economy through punitive tax and credit policies toward such operations.

13. Since the circulation of Operation Juarez, the policies of Mr. LaRouche and his associates have become a major factor in the policy deliberations of Third World and other nations. Investigative exposes published in the Executive Intelligence Review have been widely republished in major publications throughout the Third World.

14. The Executive Intelligence Review also provides an economic forecasting service which has been consistently accurate concerning the actual economic condition of the United States and other advanced sector economies where all other forecasting services have been consistently erroneous. The EIR's economic forecasts are now subscribed to as an alternative financial intelligence source by leading factions of Third World and other governments.

15. Mr. LaRouche's increasing policy influence in the Third World has been accompanied by increasing political influence in the United States. In 1982 political candidates backed by the National Democratic Policy Committee received vote totals from 18% to 49% in major races despite the relative paucity of the NDPC's financial resources. Mr. LaRouche has indicated a willingness to seek the Democratic nomination for President of the

United States in 1984 although he has not formally announced his candidacy. As is set forth fully below, Mr. LaRouche's 1980 Democratic Presidential candidacy was denounced by the New York Times and the present political factions constituting the leadership of the Democratic Party.

16. Member of the NCLC also constitute the management of PMR Printing Company, a printing company in New York City, which prints practically all publications associated with the NCLC.

17. The NCLC, its policies, programs and associated publications are controversial. As is more fully set forth below, the organization and its members have been subjected to repeated attacks in the media and law enforcement investigations instigated by or through individuals who are political opponents of the NCLC.

B. Defendants.

18. Robert Morgenthau is the District Attorney of New York County and is the individual charged with enforcing the criminal laws of the State of New York in New York County. At all times material to this complaint Robert Morgenthau acted and is acting under color of law, statute, ordinance and custom of the State of New York.

19. Harold Wilson is an Assistant District Attorney in New York County, charged with enforcing the criminal laws of the State of New York in New York County and is, upon information and belief, the assistant assigned to the Grand Jury and other investigations of the NCLC giving rise to this lawsuit. At all times material to this complaint, Harold Wilson acted and is acting under color of law, statute, ordinance and custom of the State of New York.

ALLEGATIONS AND FACTUAL RECITATION

20. Pursuant to search warrant signed by the Honorable Jeffrey Atlas of the Supreme Court, New York County, seventeen individuals identifying themselves as detectives of the New York

City Police Department searched the premises of PMR Printing Company, Inc. ("PMR") at 207 West 25th Street, New York, New York on November 16, 1982. A photocopy of the search warrant which was left by police authorities at the subject premises is annexed as Exhibit "A".

21. During the course of the search at PMR, detectives ordered individuals present on the premises to produce their identification to the detectives. According to the detectives such production was required for the search. Upon production of the identification, the detectives filled out otherwise blank Grand Jury subpoenas to the individuals and served the individuals with the Grand Jury subpoenas. (See the Affidavit of Kenneth Kronberg, annexed as Exhibit "B"). By this process, 22 individuals constituting the entire day shift and management of PMR Printing Company were subpoenaed to appear before the New York County Grand Jury at the same time on the same day.

22. Another individual, Barbara Boyd, was subpoenaed to appear before the Grand Jury when she arrived at the premises of PMR on November 16th, 1982, despite her statement to the detectives that she was not employed by PMR Printing Company, in response to her questioning of the detectives concerning the legal validity of their activities under the search warrant. (See the Affidavit of Barbara Boyd, annexed as Exhibit "C"). On December 8, 1982, Jesus Gonzales, an individual employed as a truck driver at PMR was also subpoenaed to appear before the New York County Grand Jury by a Detective who was waiting for him outside the premises of PMR.

23. Upon information and belief, the cutting knives to a King Press on PMR's premises, specified in the search warrant, were the only items confiscated by the detectives at the premises pursuant to the search warrant. The search warrant specifies that the subject of the search activities was the pamphlet "Profiles of the Times." "Profiles of the Times" is, upon information and belief, a parody pamphlet, resembling, in some respects, the book review section of the Sunday New York Times. The printing and publication of this pamphlet is at issue in the Grand Jury proceedings challenged in this lawsuit.

24. On October 26, 1982, the article annexed as Exhibit "D" was published in the New York Times. According to the article, Manhattan District Attorney Robert Morgenthau began investigating a pamphlet entitled "Profiles of the Times" on October 25, 1982 upon complaints from the New York Times and Roy M. Cohn.

25. In the article annexed as Exhibit "D", New York Times General Counsel Catherine Darrow states that the insertion of unauthorized advertising sections in newspapers or magazines is a misdemeanor under New York law. According to the Times account, copies of the pamphlet were delivered by three men in a dark van to newsstands in Manhattan and Queens. Some newsdealers said the deliverers instructed them to insert the article in the Times, and about 1,000 copies of the pamphlet may have been circulated, according to the Times account.

26. On October 27, 1982, the article annexed as Exhibit "E", appeared in the Village Voice. The article quotes Robert Morgenthau's secretary to the effect that the District Attorney's office is probing the "hoax" on the New York Times to determine "if any crime was committed by the parties involved". The Village Voice named political associates of Lyndon H. LaRouche, Jr. as targets of the District Attorney's investigation.

27. The article annexed as Exhibit "E" appeared in the Our Town newspaper for November 14th-20th, 1982. It offers a \$10,000 reward for information leading to the arrest and eventual conviction of the person or persons who published and circulated "Profiles of the Times". The reward offer specifies that individuals associated with Lyndon LaRouche should be particularly targetted for investigation.

28. By affirmation dated January 6, 1983, and submitted in proceedings before the Appellate Division, First Department of New York Supreme Court, defendant Wilson stated that the Grand Jury proceedings to which individuals on the premises of PMR Printing Company were subpoenaed on November 16, 1982 are pursuant to allegations of criminal conduct surrounding the publication and distribution of "Profiles of the Times": "Among the crimes being investigated are Forgery, Criminal

Possession of a Forged Instrument, Possession of Forgery Devices, Conspiracy, Violations of the General Business Law and related crimes."

29. Plaintiffs have reviewed the criminal codes of the State of New York and the disputed pamphlet entitled "Profiles of the Times." Plaintiffs have found no cases under the criminal code wherein the sections of the criminal codes specified in paragraph 28 of this complaint were applied to the alleged activities complained of by the New York Times in paragraph 25 of this complaint. Parody editions of well-known national publications have been published and/or distributed and sold repeatedly in the State of New York without criminal sanctions or an attempt to apply the criminal codes to such activities.

30. Upon information and belief, the complainants may have civil remedies concerning the contents of "Profiles of the Times" against the person or persons responsible for the pamphlet, including an action for defamation, but such civil remedies are not properly cognizable under the criminal laws of the State of New York. Plaintiffs believe the defendants have cited the criminal violations specified in paragraph 28 in a deliberate attempt to magnify the significance of the activities under investigation in order to justify the oppressiveness and intrusiveness of their bad faith actions against the NCLC. Moreover, were it not for defendants' desire to retaliate and deter plaintiffs in the exercise of their First Amendment and other Constitutional rights the instant Grand Jury proceedings and investigations would not be brought.

31. The publications specifying the plaintiffs as the preferred targets of the District Attorney's investigation, the Village Voice and Our Town, have engaged in a long-standing campaign of villification and similarly bizarre accusations against the plaintiffs. Four individuals associated with these publications, (Edward Kayatt, Dennis King and Kalev Pehme of Our Town, and Joe Conason of the Village Voice) have been specified to plaintiffs by confidential sources as individuals to whom the results of the District Attorney's investigations are being unlawfully disclosed and as sources for the District Attorney in the instant

investigation. The same confidential sources have specified that plaintiffs are the targets of an unlawful plan of prosecution involving both state and federal agencies and that a part of this plan will be public media defamations of the plaintiffs to give credibility to what otherwise would be ludicrous allegations and charges. Moreover, the defendant District Attorney is motivated by the same political animus toward plaintiffs as Dennis King, Edward Kayatt, Kalev Pehme, Joe Conason and the New York Times. This political animus was the determining factor in the decision by the District Attorney to launch the instant bad faith investigation in retaliation for the political policies and programs advocated by the plaintiffs.

POLITICAL ANIMUS OF THE DISTRICT ATTORNEY AND THE COMPLAINANTS

32. As is set forth in the accompanying affidavit of Jeffrey Steinberg, (Exhibit "F"), District Attorney Morgenthau, the New York Times and Roy Cohn are political adversaries of the NCLC and Lyndon LaRouche. Cohn and the Times were involved in a major and coordinated effort in 1979 to launch federal and state law enforcement investigations against LaRouche and members of the NCLC in retaliation solely for the expressed political programs and policies of LaRouche and the NCLC. The International Herald Tribune, a publication partially owned by the New York Times, was found guilty of criminal libel of Lyndon LaRouche by a French Court when it republished the New York Times 1979 series on LaRouche. The New York Times also served as a conduit for FBI originated defamations concerning the NCLC during the FBI's 10-year domestic security investigation of the NCLC.

33. District Attorney Robert Morgenthau was formerly a national committee member of the Anti-Defamation League of B'Nai B'rith ("ADL") and maintains continuing relationships with officials of that organization including Irwin Suall, Arnold Forster, Justin Finger, Kenneth Bialkin and others. The ADL has consistently defamed the NCLC and Lyndon LaRouche as

"anti-Semitic" in a persistent international harassment campaign against LaRouche and his associates dating from 1977.

34. The NCLC identifies the ADL as an asset of an intelligence network spawned by Jay Lovestone in the United States and internationally, a network which is politically affiliated with the Second Socialist International. This intelligence network has been repeatedly implicated in international operations involving drugs and political terrorism.

35. In the United States, by the statements of ADL officials, ADL harassment efforts are concentrated on the use of law enforcement investigations and compliant law enforcement officials to achieve the ADL's declared aim of destroying the NCLC political organization. According to the statements of Abbott Rosen, a national official of the ADL, the ADL knows these investigations are discriminatory and without legal merit. The design of the harassment effort is to drive the NCLC "out of business". State and federal law enforcement investigations are the preferred vehicle for the ADL's illegal actions because private abusive legal actions expose the participant to civil discovery and might enhance rather than defeat the credibility of the NCLC. (See the Affidavit of Robin Hyman and the transcript annexed thereto, Exhibit "G").

35. District Attorney Robert Morgenthau is also presently the national co-chairman of an organization called the International Conference for PEACE, a propaganda organization for West Bank expansion policies founded by Ariel Sharon in the United States. Upon information and belief, Morgenthau is a close personal friend of Ariel Sharon.

36. The NCLC, in political campaigns within Israel, Western Europe and the United States for Middle East peace based upon intensive scientific and economic development of the entire region, has consistently opposed the Sharon faction in Israeli politics. The NCLC has investigated and exposed the domination of this faction by organized crime elements, the "Israeli mafia", acting against the interests of the Jewish community in the Middle East and internationally.

37. As is set forth in the Steinberg affidavit, "Exhibit F", contemporaneously with the instigation of the instant Grand Jury proceedings, NCLC members were publishing in the Executive Intelligence Review detailed exposes of the involvement of the Sharon faction in Israel with Lord Carrington and Henry Kissinger in major real estate dealings, aimed at buying up the West Bank and substantively destabilizing Israeli politics, an operation for which PEACE was a critical United States propaganda vehicle. These exposes received wide circulation through EIR's readership in Israel and throughout the Middle East.

38. Meir Jolawitz, a national board member of PEACE, is also the National Director of the Jewish Defense League ("JDL"). Defendants Morgenthau and Wilson have repeatedly refused to investigate threats delivered to members of the NCLC by the JDL. Defendant Morgenthau appears to have an agreement with Jolawitz that any attacks on the NCLC by the JDL will not be prosecuted. Meir Jolawitz has stated to an investigator for the NCLC that the JDL has received outside funding for attacks against NCLC members. (See Steinberg Affidavit, Exhibit "F"). Since the instigation of the instant Grand Jury proceedings there has been a renewed pattern of threats by the JDL to NCLC members.

39. District Attorney Morgenthau is a Board member of the Puerto Rican Legal Defense Fund, an organization which has been investigated by the NCLC for its ties to the FALN organization and terrorism. The District Attorney's wife, Lucinda Franks, is a reporter who has extensively reported upon the Weathermen and other terrorist organizations for the New York Times and other publications. Lucinda Franks is a former employee of the New York Times. Franks states in her articles that she empathized with her terrorist subjects and gained their trust. The Weathermen and similar terrorist organizations have repeatedly threatened the NCLC and LaRouche since 1968. (See Steinberg Affidavit, Exhibit "F").

40. Prior to the instant Grand Jury proceedings, District Attorney Morgenthau was involved, to plaintiffs' knowledge, in two other hostile and legally questionable actions against plain-

tiffs in his official capacity. In 1978, the District Attorney required Lyndon LaRouche's personal testimony in a criminal proceeding on extremely questionable legal grounds. The call by the District Attorney for LaRouche's testimony followed a very serious security incident at a public appearance by LaRouche in Detroit, Michigan. Morgenthau refused all requests for security provisions for LaRouche. Federal court intervention resulted in the provision of minimal security protection by the District Attorneys' office for LaRouche at the time of his testimony. (Steinberg Affidavit, Exhibit "F").

41. On December 16, 1981, Dennis King and Chip Berlet (a free-lance journalist who is a contributing editor to "High Times" magazine, a publication advocating and advertising drug use and paraphernalia), alleged in a press conference in Washington D.C. that the NCLC was tied to right-wing elements of the Central Intelligence Agency, including Edwin Wilson and Frank Terpil. Berlet and King cited tape recordings of conversations between Terpil and Mitchell Warbell, an individual involved in training NCLC security personnel, as the basis for these allegations. The tape recordings were leaked to journalists by a detective in the New York City Police Department working under the supervision of District Attorney Morgenthau in the Terpil-Wilson investigation. In that case, the New York Times worked closely with District Attorney Morgenthau in demands for federal prosecution. Sergeant Melvin Woike, the police detective who obtained the search warrant on PMR's premises, was the arresting officer in the arrest of Frank Terpil. (Steinberg Affidavit, Exhibit "F").

42. The same December 16, 1981 press conference by King and Berlet called for federal and state prosecution of the NCLC under a variety of bizarre legal pretexts including violations of the foreign agents registration act, the campaign finance laws, the espionage laws, and the Internal Revenue Code.

INVESTIGATIVE ACTIONS

43. On or about October 26, 1982, Jeffrey Steinberg of the NCLC began receiving detailed information from confidential law enforcement and other sources concerning the "Profiles of

the Times" investigation by District Attorney Morgenthau. The information relayed is in correspondence with the development of the New York Grand Jury proceedings and investigation concerning "Profiles of the Times" and contemporaneous bad faith actions of other investigative agencies.

44. As is set forth in detail in the Steinberg affidavit, his sources reported to him: (1) the NCLC was the target of the Grand Jury proceedings concerning "Profiles of the Times"; (2) the Grand Jury process in New York County is being utilized for purposes of generating information for civil lawsuits by the New York Times, Roy Cohn and other individuals pursuant to a general plan of "financially bleeding" and diverting the NCLC from its political activities; (3) information developed from the Grand Jury proceedings in New York County and the District Attorney's investigation and presentation to the Grand Jury is being discussed in detail with political opponents of Lyndon LaRouche, including the New York Times, Our Town newspaper, Dennis King, Kalev Pehme, Chip Berlet, the ADL, Manny Goldstein and Roy Cohn and with federal and state law enforcement authorities not assigned to the "Profiles of the Times" investigation; these individuals and entities are, in turn, serving as the District Attorneys' informants in the investigation; (4) the Grand Jury proceedings in New York County are undertaken not for the purposes of obtaining a valid conviction, but solely for the purposes of generating information on individual members of the NCLC and its organizational structure for broader private civil litigative actions against the NCLC and associated organizations and state and federal prosecutorial actions against the NCLC to be undertaken simultaneously. These investigations are aimed at permanently discrediting the NCLC, severing all relationships between members of the NCLC and law enforcement, intelligence and government news sources and political collaborators and destroying the very fabric of the NCLC political organization and are without legal authority; (5) the indicated legal assault against the NCLC would be accompanied by media "exposes" of the NCLC calling for prosecutions and legal actions against members of the NCLC and organizations and individuals associated with the NCLC; individuals associ-

ated with the news media would also be utilized to conduct investigations concerning the NCLC with information generated by these investigations promptly delivered, by prior agreement, to the law enforcement agencies; (6) law enforcement authorities and private agencies engaged in this legal assault had placed informants within the NCLC and associated organizations for purposes of gathering information for harassment activities against NCLC members and for disrupting the NCLC organization; the same authorities were also seeking means to fabricate evidence against the NCLC. According to the Steinberg affidavit, sources providing detailed information concerning these unlawful and retaliatory actions against the NCLC specified that the decision, by political opponents of the NCLC and Lyndon LaRouche, to go forward with these actions was made on the basis of Lyndon LaRouche's increasing political influence in the United States, the Third World and Western Europe.

45. Upon information and belief, the District Attorney placed an informant within the staff of PMR Printing Company, who was named Jeff Saunders, pursuant to the unlawful and provocative planned use of informants specified by Steinberg's sources and otherwise in violation of the constitutional rights of plaintiffs and members of plaintiff organization. When Saunders was fired from PMR for his disruptive activities including attempts to start fights in the plant he stated to Nancy Shavin that the instant bad faith proceeding concerning "Profiles of the Times" was only one of a series of retributive proceedings to be undertaken by the District Attorney and other authorities including actions for violations of the state tax and labor laws. (See affidavit of Nancy Shavin, annexed as Exhibit "H", affidavit of Kenneth Kronberg, annexed as Exhibit "B").

46. Upon information and belief, Jonathan Beaty, a reporter for Time Magazine, is a reporter and informant being utilized by the District Attorney pursuant to the investigative plan specified by Steinberg's sources for gathering information concerning the NCLC and otherwise in violation of the Constitutional rights of plaintiff political organization and its members. Beaty attempted to solicit comment concerning "Profiles of the Times"

from Robert Greenberg and Lyndon LaRouche of the NCLC. Beaty has in the past been intimately associated with the United States Department of Justice and the Federal Bureau of Investigation.

47. Defendants' conceded actions in the "Profiles of the Times" investigation to date, the timing of the investigation and the relationship and the history of the parties involved in addition to the incidents of prosecutorial and investigative misconduct alleged in paragraphs 45 and 46, are prima facie indicia that this investigation is proceeding in bad faith for an impermissible purpose.

48. Seventeen New York City Police Detectives raided a printing plant and subpoenaed the entire workforce of the plant to appear before the Grand Jury at the same time on the same day. The District Attorney gratuitously asserts that multiple misdemeanors and a felony count are being investigated to justify the prosecutorial deployment and resources involved in the investigation. The investigation is initiated when plaintiffs publish exposes of illegal activities of the Sharon faction in Israel. The prosecutor, Robert Morgenthau, is intimately associated with this political faction. The prosecutor is also associated with an organization, the ADL, which advocates the unlawful use of state and federal law enforcement machinery against the plaintiffs in order to retaliate for and deter plaintiffs in the exercise of their Constitutional rights. ADL officials have specified that this is a preferred means of attack since abusive civil actions might subject the initiators to civil discovery by the NCLC and enhance rather than destroy the NCLC's credibility and reputation. The prosecutor has refused to investigate terrorist threats made to plaintiffs by the JDL. The prosecutor is an official of an organization which also includes the national head of the JDL as an official, "PEACE." Robert Morgenthau's office participated in past leaks of investigative materials from the Terpil-Wilson investigations to individuals known to be hostile to plaintiffs and these leaks were used in defamations of plaintiffs specifically linking them to terrorism and the Central Intelligence Agency.

49. Upon information and belief, on or about November 16, 1982, a second bad faith law enforcement investigation was opened on members of the NCLC by and through the Federal Bureau of Investigation in Baltimore, Maryland. This investigation concerns the campaign finances of NCLC member and National Democratic Policy Committee backed candidate Debra H. Freeman. Freeman received 20% of the vote in her primary contest against Congresswoman Barbara Mikulski. Freeman won some precincts in working class districts and her vote was in the 40-49% range in those districts of South Baltimore. The circumstances of this investigation also corroborate the general bad faith investigative plan communicated to Steinberg by his confidential sources.

50. The Baltimore Evening Sun began "investigation" of Freeman immediately after the primary campaign, subsequently publishing a defamatory series attacking the candidate, Lyndon LaRouche and the NCLC. Many of the defamatory characterizations employed by the Evening Sun reporter were originally developed by the FBI concerning the NCLC in its 10 year "domestic security investigation" of LaRouche and the NCLC. The FBI's domestic security investigation is the subject of a lawsuit in this District, *LaRouche v. Webster*, 75 Civ. 6010 (MJL). The Sun articles called for immediate federal investigation of Freeman, asserting in an editorial that the candidate had received too many "uninformed" votes. The FBI announced the opening of the investigation through an interview granted to the Baltimore Evening Sun. Such statements by the FBI were completely contrary to Justice Department policies concerning comment upon preliminary investigations.

51. The NCLC has moved for a preliminary injunction against this investigation in *LaRouche v. Webster*, 75 Civ. 6010 (MJL) and is seeking to deposition the Baltimore Evening Sun reporter who authored the series, Mark Arax, concerning his relationship with the FBI. Both the FBI and the reporter have moved to quash deposition subpoenas issued in this lawsuit. Mr. Arax is represented by Venable, Beatjer and Howard in Baltimore, the lawfirm of former Attorney General Benjamin Civiletti. Mr. Civiletti had threatened to sue the Lyndon LaRouche and indi-

viduals and organizations associated with plaintiffs for published allegations against Civiletti concerning the ABSCAM investigations. Mr. Civiletti did not pursue his threat of a defamation suit.

52. On or about December 23, 1982, Robert Greenberg of the NCLC interviewed Ed Jagen of the Investigative Services Division of the Washington, D.C. Metropolitan Police Department. Detective Jagen, who works in police intelligence stated that he was involved in a federal investigation of the NCLC and Lyndon LaRouche which did and would "overlap" with the "Profiles of the Times" investigation. (Greenberg Affidavit, Exhibit "I"). This statement makes no legal sense to plaintiffs except in the context of the plan to launch repeated bad faith investigations of LaRouche and the NCLC, specified to Steinberg by his confidential sources.

53. As is set forth in the Steinberg affidavit, "Exhibit "F", confidential sources have specified to Steinberg that the Federal Bureau of Investigation is intent upon investigating and prosecuting the NCLC under any fabricated pretext available to that agency. To that end the FBI has initiated a program of infiltration of the NCLC and entrapment and "sting" operations. These operations are to be legally justified by the FBI under new guidelines promulgated by the the Department of Justice allowing intrusive investigations of "dormant" "violence-prone" groups.

54. Plaintiffs have previously been the targets of bad faith law enforcement investigations, harassment and other actions. These law enforcement actions were undertaken to retaliate against plaintiffs in the exercise of their rights to speech, press and association and to burden and deter plaintiffs in the exercise of those rights.

55. From 1968 through 1977 the National Caucus of Labor Committees and predecessor organizations were investigated by the FBI under the Internal Security Laws of the United States. This investigation did not result in one indictment or presentment to a Grand Jury. As is set forth in *LaRouche v. Webster*, 75 Civ. 6010 (MJL) S.D.N.Y., the National Caucus of Labor Committees and its members were subjected to unlawful FBI

COINTELPRO tactics throughout the course of the investigations.

56. FBI actions against the NCLC or its members during the course of the domestic security investigation included unlawful interference in political campaigns of political candidates, direct FBI intimidation and harassment of candidates and their families, media defamations of candidates, and the funneling of derogatory information concerning candidates to their political opponents. The FBI collaborated with state officials in selective enforcement of local ordinances against NCLC political organizing activities. The FBI collaborated with media resources and private organizations, including the AFL-CIO, the League for Industrial Democracy and the ADL in defamation and harassment activities against the NCLC. The FBI encouraged and condoned physical assaults on NCLC members by terrorist organizations which it characterized as rival political groups, including the Weathermen, the Revolutionary Union and the Black Panther Party. The FBI consistently monitored and acted to disrupt NCLC sources of financial support.

57. As is set forth in *LaRouche v. Webster*, many of the media defamations against the NCLC currently in circulation were developed originally by the FBI in the course of its unlawful COINTELPRO program. These defamations are now circulated by the same media conduits and private organization sources utilized by the FBI in that unlawful program. The FBI also acted to discredit and disrupt newsgathering activities by NCLC members and the relationship between NCLC members and new sources.

58. In 1980, when Lyndon LaRouche received public financing in his bid for the Democratic presidential nomination, LaRouche's political opponents, including the ADL, the New York Times, Our Town and members of the Democratic National Committee launched a national media campaign denouncing the grant of Federal matching monies and demanding either a change in the Federal Election Campaign Act to prevent similar future occurrences or a full FEC investigation of LaRouche and his campaign committee.

59. A full two year FEC investigation did in fact result from these demands. This investigation was finally halted by a preliminary injunction in *Dolbeare v. FEC*, 81 Civ. 4468 (CLB) with the Court stating in its March 9, 1982 Memorandum and Order:

"It would be hard to imagine a more abusive visitation of bureaucratic power, than has already been imposed upon this relatively insignificant splinter political group, as is shown by the relatively uncontroverted facts alleged here and described, we think with some restraint, in the foregoing pages of this opinion."

60. In 1981, the ADL, journalists associated with High Times Magazine and the National Organization for Reform of Marijuana Law and the Chicago Sun-Times collaborated in a campaign to shut down the political organizing activities of the National Anti-Drug Coalition in Illinois and nationally through a bad faith and selective application of the charitable organization laws and a campaign of defamation.

61. The Illinois Attorney General, without resort to the Courts, ordered towns in Illinois to ban NADC solicitation activities, following the NADC's registration with the Attorney General and demand to the Attorney General for a formal opinion as to whether or not the charitable organization statutes applied to political organizations. The rationale for the Attorney General's action was that the NADC had failed to turn over financial statements concerning the first six months of its first fiscal year to the Attorney General, a requirement which is nowhere specified in the law. These actions of the ADL, the Chicago Sun-Times, individual journalists and the Illinois Attorney General are presently the subject of a lawsuit for declaratory and injunctive relief and damages in the United States District Court for the Northern District of Illinois. *National Anti-Drug Coalition vs. Tyrone C. Fahner*, 82C-1480).

STATE COURT PROCEEDINGS

62. By Notice of Motion dated December 2, 1982, plaintiffs moved in the Supreme Court, New York County to enjoin the Grand Jury proceedings concerning "Profiles of the Times" and

to quash subpoenas issued to NCLC members on the premises of PMR Printing Company on November 16, 1982. Plaintiffs alleged that the Grand Jury proceedings were conducted in bad faith, for purposes of political harassment and that the Grand Jury lacked subject matter jurisdiction. Plaintiffs also moved for an evidentiary hearing on their claims of bad faith on December 9th, 1982.

63. Nine individual members of the NCLC joined by fifteen employees of PMR Printing Company (hereinafter "the witnesses") also moved in Supreme Court, New York County to quash the subpoenas on the grounds that the subpoenas were issued unlawfully under New York state statute, and in a manner which violated the Fourth Amendment rights of the witnesses. In addition this motion challenged the subject matter jurisdiction of the Grand Jury.

64. The Supreme Court, New York County, Jeffrey Atlas, J.S.C. ruled that the plaintiffs did not have standing to intervene or to quash the subpoenas issued to members of the NCLC under CPLR 1012 or CPLR 2304 and on that basis solely denied plaintiffs' motion.

65. The Supreme Court, New York County, Jeffrey Atlas, J.S.C., denied the motion by the individual witnesses to quash the subpoenas on statutory and Constitutional grounds, ruling that the method of issuing the subpoenas was appropriate. A stay on the return of these subpoenas pending application for interim relief to the Appellate Division was consented to by defendant Wilson upon the application of the attorney for these witnesses and the suggestion of Justice Atlas.

66. Justice Atlas was the Justice who signed the search warrant for PMR's premises, and, upon information and belief, had prejudged the issues raised by the plaintiffs and the individual witnesses.

67. Plaintiffs sought an interim stay from the Appellate Division, First Department, which stay was denied. Plaintiffs' application for a stay and for an expedited hearing and briefing schedule to the Appellate Division, First Department, was de-

nied. Plaintiffs then moved to renew their application for an expedited hearing and briefing schedule on appeal or, in the alternative, for leave to appeal to the Court of Appeals the denial of the stay and expedited hearing and briefing schedule. This motion was also denied. Plaintiffs' appeal of Justice Atlas's Order denying plaintiffs standing to bring their claims under CPLR 1012 and CPLR 2304 is presently before the Appellate Division but will not be heard before the May term of the Court.

68. The motion for an interim stay by the two groups of individual witnesses subpoenaed at PMR Printing Company was granted by the Appellate Division. However, on Friday, March 11, the Appellate Division denied the motion for a stay and for an expedited hearing and briefing schedule on their appeal. This means that members of the NCLC could be called before the Grand Jury at any time, subject to the discretion of the District Attorney.

69. Plaintiffs and the individuals whose rights they seek to represent have for every practical purpose exhausted state remedies. The appeals on these motions will not be heard and decided for a period of months. These appeals could be mooted at any time by the calling of witnesses before the Grand Jury by the District Attorney. The denials of the stays and expedited hearing and briefing requests in both appeals indicates that the Appellate Division will deny the relief requested by plaintiffs and the individual witnesses in those proceedings.

70. As is set forth in the accompanying Memorandum of Law plaintiffs have no adequate state forum in which to raise and vindicate their Constitutional claims. The only possible state remedy now available to plaintiffs is the filing of the present action in the state court rather than the Federal system, a result which has never been required by the policies of comity and federalism. Recent New York Court decisions also call into question whether or not individual witnesses can raise claims of bad faith investigation or harassment prior to participation in the very prosecution which they seek to halt or enjoin through the mechanisms provided in the State Courts.

71. Plaintiffs have standing to raise constitutional claims on behalf of the political organization and on behalf of the members of the political organization. As is set forth in the accompanying affidavit of Kenneth Kronberg, a member of the National Committee of the NCLC and the President of PMR Printing Company (Exhibit "B"), PMR Printing Company is managed by members of the NCLC and prints all publications associated with the NCLC. Its officers are members of the NCLC. Further, the NCLC political organization is the target of the Grand Jury proceedings and is adversely affected thereby—the Constitutional rights of the political organization and of its members are violated by this bad faith investigation. The Supreme Court of the United States and the federal courts have held that political organizations have standing to raise Constitutional claims on behalf of their members in precisely analogous contexts.

72. Plaintiffs are without an adequate remedy at law and no application for similar relief as been made to this Court.

73. Plaintiffs are without funds to post a bond in this action.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray that this Court:

(1) Grant plaintiffs a temporary restraining order, if such relief is requested on application, staying enforcement of all subpoenas issued to individuals present on the premises of PMR Printing Company on November 16, 1982 and to Jesus Gonzales on December 8, 1982 and enjoining the issuance of any new subpoenas to members of the NCLC by defendants;

(2) Grant plaintiffs a preliminary injunction upon an evidentiary hearing on application for a preliminary injunction, staying enforcement of all Grand Jury subpoenas issued to individuals on the premises of PMR Printing Co. Inc. on November 16, 1982 and to Jesus Gonzales on December 8, 1982 and enjoining the issuance of any new subpoenas to members of the NCLC by defendants, during the pendency of this action;

(3) Issue a declaratory judgment and a permanent injunction Order upon the trial of this action finding that: (a) defendants have conducted and are conducting bad faith law enforcement investigations against plaintiffs, violating the Constitutional rights of plaintiff political organization and its members under color of state law; (b) these bad faith law enforcement investigations were undertaken to retaliate against plaintiffs in the exercise of their First Amendment and other Constitutional rights, are brought without the expectation of obtaining valid convictions and would not have been initiated except for the impermissible retaliatory motive; (c) these bad faith investigations were undertaken in conjunction with private individuals, organizations and other law enforcement agencies acting similarly to injure and deter plaintiffs, under color of law, in the exercise of their Constitutional rights; and (d) permanently enjoining all such investigations;

(4) Grant plaintiffs their costs and attorneys fees in this action pursuant to the provisions of 42 U.S.C. 1988;

(5) Grant plaintiffs such other further and different relief as may be just in the premises.

Dated: New York, New York

March 25, 1983.

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Troy, Tommasino,
Anderson & Reilley
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Office and P.O. Address
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617-720-1800

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EXHIBITS TO COMPLAINT

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**NATIONAL COMMITTEE and
NATIONAL EXECUTIVE COMMITTEE
OF THE NATIONAL CAUCUS OF
LABOR COMMITTEES,**

Plaintiffs,

vs.

**ROBERT MORGENTHAU, District
Attorney of New York County
and HAROLD WILSON, Assistant
District Attorney of New York County,**

Defendants.

AFFIDAVIT OF KENNETH KRONBERG

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**NATIONAL COMMITTEE and
NATIONAL EXECUTIVE COMMITTEE
OF THE NATIONAL CAUCUS OF
LABOR COMMITTEES,**

Plaintiffs,

vs.

**ROBERT MORGENTHAU, District
Attorney of New York County
and HAROLD WILSON, Assistant
District Attorney of New York County,**

Defendants.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

KENNETH KRONBERG, being duly sworn, deposes and says:

1. I am a member of the National Committee of the National Caucus of Labor Committees ("NCLC"), and the President of PMR Printing Company, Inc. ("PMR"). I make this affidavit in support of the motion by the National Executive Committee and the National Committee of the NCLC for a preliminary injunction in this action.

2. I have read and I am fully familiar with the affidavit of Jeffrey Steinberg submitted in support of this motion. I believe that the NCLC organization is the target of the Grand Jury investigation and that the investigation is being conducted in bad faith for political harassment purposes. The National Executive Committee of the NCLC and the National Committee of the NCLC are the governing bodies of the NCLC political association and are elected by the membership on a bi-annual

basis to initiate and assure the execution of the political policy initiatives of the organization. The NCLC is an unincorporated political association. Members of the NCLC intervene in political events internationally, primarily on behalf of the NCLC's campaign for a New World Economic Order based upon policies of high-technology economic development and associated policies for scientific breakthroughs at the frontiers of human knowledge. In campaigning on behalf of these policies the NCLC has developed a unique political intelligence capability, allowing the organization to understand and influence strategic political events. The accuracy of this intelligence capacity is the primary basis for the NCLC's survival against powerful political opponents who propose a new Malthusian world order based upon "controlled disintegration" of the world economy. Since its founding in 1968 by Lyndon LaRouche, the NCLC has vigorously campaigned against proponents of the new Malthusianism and the genocidal consequences of such policies, particularly in Third World nations.

3. On November 16, 1982, the premises of PMR Printing Company, Inc. in New York City were searched by 17 individuals identifying themselves as detectives of the New York City Police Department. Twenty-two employees of PMR Printing Company, Inc. were subpoenaed by the identified police officers to appear before the New York County Grand Jury on that date.

4. Nine of the individuals subpoenaed on November 16, 1982 are members of the National Caucus of Labor Committees. PMR Printing Company, Inc. is managed by members of the National Caucus of Labor Committees and owned by members of the NCLC or its political supporters. All publications written and published by members of the NCLC or organizations associated with Lyndon H. LaRouche, Jr. are printed at PMR Printing Company, Inc.

5. Since the NCLC is the investigative target of the Grand Jury, and since the First Amendment associational and speech rights of the NCLC are at stake and adversely affected by the bad faith investigation conducted by the District Attorney, I

believe that the NCLC is the real party in interest in these proceedings and has standing to raise Constitutional claims on behalf of the NCLC and its members.

6. I was present at PMR during the search of the premises on November 16, 1982 by individuals identifying themselves as Detectives from the New York City Police Department. I observed Detectives who were identified to me by Sergeant Woike as Detective O'Rourke and Detective Tonneson, serving Grand Jury subpoenas to persons present on PMR's premises. Both officers asked persons to produce their identification stating that such production was necessary for the search. When the identification was produced, the identification was used to fill out blank Grand Jury subpoenas which were delivered to the individual. By this process or a similar process on November 16, 1982, 22 individuals on PMR's premises were subpoenaed to appear before the Grand Jury. The subpoenas were all returnable on the same day and time.

6. On November 17, 1982, PMR terminated the employment of an individual named Jeff Saunders. Saunders had been involved repeatedly in attempting to provoke fights with other employees at PMR and in abusive and disruptive behavior during his short period of employment.

7. Following his termination from employment, Saunders visited PMR's premises according to reports of these visits by PMR employees. He went to other individuals and firms in the building which houses PMR, accusing PMR of unlawful activities.

8. During one of these visits on November 24, 1982, Saunders approached Nancy Shavin and made the statements which are set forth in Nancy Shavin's Affidavit (Exhibit "H" to the Complaint). I believe that these statements identify Saunders as an informant for the District Attorney who was sent into PMR to gather information, to fabricate evidence concerning PMR and to engage in the provocative activities which resulted in his termination from employment. I also believe that Saunders' statements reflect the scope of the District Attorney's bad faith investigation of PMR.

9. Following the District Attorney's search of PMR premises, PMR received a request for an audit of its books and records from the City of New York. Counsel for PMR agreed to give certain information to the City if the City would certify that the requests for information and the audit were undertaken in the normal course of the City's tax enforcement responsibilities. The City refused to provide such a statement (See the correspondence annexed as Exhibit "1").

10. Subsequently, the City official conducting the PMR audit explained that the request for the examination had been something of a mistake and that the request was triggered by PMR's claim that the City owed it a refund on taxes.

11. During the weeks of November 17th through December 3rd, PMR received a number of unsolicited calls from persons representing themselves as potential customers. These individuals requested typesets and paper utilized by PMR in its printing operations. These calls were highly unusual, as they requested specific samples of materials unrelated to any particular job to be printed. In my experience, we have never before or since been called by a potential customer who had no idea whatsoever as to what he wanted printed, but was positive concerning the materials he wanted to sample. During this same period two New York City policemen parked outside the plant and stated to PMR employees that they were looking for Myles Robbins and that they wanted to talk to him about the cutting blades utilized on a press at PMR. I believe they wanted to talk to Robbins about the press cutting blades which were confiscated pursuant to the search warrant.

12. I believe the individuals who made the unsolicited customer calls to PMR were either working directly for the District Attorney or indirectly for the District Attorney in pursuit of the \$10,000 reward offered by Our Town. Jeffrey Steinberg told me of the reports to him that the District Attorney was attempting to fabricate evidence against PMR concerning the Profiles of the Times investigation, and that reporters to whom information is being leaked concerning this investigation stated that forensic tests on blades seized from PMR had been inconclusive. The

activities of Jeff Saunders, the unsolicited telephone calls, and the requests for further information from Myles Robbins are consistent with Steinberg's informant reports.

/s/ Kenneth Kronberg

KENNETH KRONBERG

Sworn to before me this
24th day of March, 1983.

/s/ George Canning

NOTARY PUBLIC

GEORGE CANNING

Notary Public, State of New York

No. 01-4738778

Qualified in New York County

Commission Expires March 30, 1983

THE CITY OF NEW YORK
DEPARTMENT OF FINANCE
BUREAU OF TAX COLLECTION
345 Adams St., B'klyn, NY 11201

Telephone: 403-4015

In Reply Refer To: Mona Sidarous

Audit Unit Regular Corp. Tax-A 10th fl. N.

Date: January 5, 1983

Audit No.(s) RGCT-6164-GCT

Reg. No.

Empl. Ident. No. 13-2906768

PMR Printing Co., Inc.

207 West 25th Street

New York, NY 10001

Please be advised that a representative of this Department will call at your place of business on January 25, 1983 to audit the tax returns filed by you for the periods indicated below:

<u>Type of Tax</u>	<u>Period</u>
General Corporation	7/1/77 - 6/30/82
Commercial Rent	6/1/77 - 5/31/82

In connection with said audit you are required to make available all of your books, records, schedules, worksheets and all other data used in the preparation of these returns for the above period. These records must be retained by you pending the final disposition of any proceeding involving a review of said audit whether before the Commissioner of Finance or the Courts.

If the date fixed for the audit is inconvenient to you, please notify this Department within five (5) days from the date of this letter of a more suitable date which shall not be more than thirty (30) days from the audit date. If no reply is received within the time specified, the audit will commence on January 25, 1983.

Very truly yours,
DEPARTMENT OF FINANCE
Audit Section
by G.C. Ollivierre
Unit Head

LAW OFFICES OF
Hochheiser & Aronson
The Chrysler Building
405 Lexington Avenue
New York, N.Y. 10174

Lawrence Hochheiser
Kenneth J. Aronson
Fred Fisher

Telephone:
(212) 697-5800

December 22, 1952

Ms. Siderious
New York City Department of Finance
345 Adams Street—10th Floor North
Brooklyn, New York 11201

Re: P.M.R. Printing Co., Inc.
Employer I.D. no. 13-2906768

Dear Ms. Siderious:

Last week, my client, P.M.R. Printing Co., Inc., received a telephone call from you during which the company was informed that you had been assigned to conduct an audit of their New York City tax payments. In order to assist you in your endeavor, you requested, as a courtesy, copies of the company's general corporate tax returns and commercial rent tax forms for the past three years.

In the course of our December 17th and December 20th telephone conversations, I advised you that I had reason to believe that this audit may well have been triggered by requests from outside agencies and might constitute a form of harrassment. I agreed to provide you with photocopies of the relevant tax returns on the condition that you or someone in your bureau would state in writing that the audit was not instituted at the request of any outside federal, state, or New York City agency. You, in turn, declined to furnish such a letter.

In the event that the Department of Finance changes its position on this matter, P.M.R. Printing Co., Inc., will be happy to furnish you with the requested tax forms.

Please feel free to contact me if you have any questions in regard to this matter.

Very truly yours,
Kenneth J. Aronson

AFFIDAVIT OF NANCY SHAVIN
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATIONAL COMMITTEE and NATIONAL EXECUTIVE
COMMITTEE OF THE NATIONAL CAUCUS OF LABOR
COMMITTEES,

Plaintiffs,

vs.

ROBERT MORGENTHAU, District Attorney of New York County
and HAROLD WILSON,
Assistant District Attorney of New York County,
Defendants.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

NANCY SHAVIN, being duly sworn, deposes and says:

1. On November 24, 1982 I was at PMR Printing Company and I walked out of the offices of PMR at approximately 3:30 p.m.

2. In the elevator area of PMR's floor a man approached me and asked me if I worked at PMR. I said no. He then asked me if I knew the bookkeeper. I said yes. The elevator arrived and the conversation with this gentleman continued in the elevator and in front of PMR on the street. He said the bookkeeper and PMR were in alot of trouble. He said the District Attorney was investigating PMR for taxes, for labor violations, for shady business deals and for printing a phony supplement to the New York Times. He also said that the landlord wanted to kick PMR out of the building. He then said, how do you know Shaw. I said she is a friend of mine. He said that Shaw would be spending her next Thanksgiving in Bedford, a women's prison, because she was a co-conspirator.

3. I said that these were pretty hefty accusations and asked him who he was. He stated that he was an investigator. After the man had walked down the street and was out of sight I returned to PMR and asked the receptionist, Roxanne, if she recognized the man who had gotten in the elevator with me. She stated that the man was Jeff Saunders.

/s/ Nancy Shavin
NANCY SHAVIN

Sworn to before me this
24th day of March, 1983.

/s/ George Canning
NOTARY PUBLIC

GEORGE CANNING
Notary Public, State of New York
No. 01-4738778
Qualified in New York County
Commission Expires March 30, 1983

AFFIDAVIT OF BARBARA BOYD
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATIONAL COMMITTEE and NATIONAL EXECUTIVE
COMMITTEE OF THE NATIONAL CAUCUS OF LABOR
COMMITTEES,

Plaintiffs,

vs.

ROBERT MORGENTHAU, District Attorney of New York County
and HAROLD WILSON,
Assistant District Attorney of New York County,
Defendants.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

BARBARA BOYD, being duly sworn, deposes and says:

1. On November 16, 1982 I went to the premises of PMR Printing Company following a call from Ken Kronberg stating that the premises were being searched by detectives who identified themselves as from the New York City Police Department. I am a member of the legal staff of the NCLC and decided to go to PMR to observe the search procedure.

2. I arrived shortly after noon and asked to see a copy of the search warrant. The warrant was shown to me by Kronberg.

3. I asked Kronberg and Beth Shaw if they knew who was in charge of the search. Shaw told me to look for Sergeant Woike.

4. I walked to the back of the plant where a video crew and cameraman were stationed with several detectives. I asked to speak with Sergeant Woike. Sergeant Woike came up to me and I asked him whether or not the search warrant, in his view, gave him the right to video and photograph the entire plant. I also asked him the name of the Justice who had signed the warrant

since the signature was unclear. He stated that the warrant did not say they could video the plant or take pictures but that the Justice had given his permission to do so and that the Justice's name was Justice Jeffrey Atlas.

5. I then began to proceed from room to room with Mr. Kronberg to attempt to determine what the large number of personnel engaged in the search were doing. Almost immediately, I was approached by a man who Sergeant Woike subsequently identified as Detective O'Rourke. He asked me my name. I stated my name. He then asked me if I worked at PMR. I replied that I did not. He then asked me where I worked and I stated that I did not think I had to tell him that. He said that this information and my address were required for the purposes of the search. I told him that I did not think this was true and that I wanted to consult with an attorney. I then proceeded to attempt to contact an attorney. Detective O'Rourke followed me to the room where I went to use the telephone and stayed outside the room during the entire time I was using the telephone. When I walked out I had not reached an attorney and Detective O'Rourke again asked for my address. I gave him the address at which point he filled out a Grand Jury subpoena in my name and served it upon me.

6. Subsequently Detective O'Rourke and Sergeant Woike came into a room where I was calling attorneys discussing various questions concerning the propriety of the search activities. They stated that they had to search the room and that my handbag was part of the search since it was in the room. Detective O'Rourke went through my bag and when he got to my checkbook he pulled it out and copied down the address, stating that I had given him the wrong address for the subpoena. I stated that I had not.

7. I believe that the way in which I was served a subpoena constitutes a violation of my Fourth Amendment rights and an abuse and violation of the New York statutes concerning Grand Jury subpoenas. I also believe that I was subpoenaed solely because I asked the police certain legal questions concerning

the search and my presence interfered with their planned activities in the search.

/s/ Barbara Boyd

BARBARA BOYD

Sworn to before me this
24th day of March, 1983.

/s/ George Canning

NOTARY PUBLIC

GEORGE CANNING
Notary Public, State of New York
No. 01-4738778
Qualified in New York County
Commission Expires March 30, 1983

AFFIDAVIT OF JEFFREY STEINBERG

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**NATIONAL COMMITTEE and NATIONAL EXECUTIVE
COMMITTEE OF THE NATIONAL CAUCUS OF LABOR
COMMITTEES,**

Plaintiffs,

vs.

**ROBERT MORGENTHAU, District Attorney of
New York County and HAROLD WILSON,
Assistant District Attorney of New York County,**

Defendants.

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

JEFFREY STEINBERG, being duly sworn, deposes and says:

1. I am a member of the National Committee of the National Caucus of Labor Committees ("NCLC"). I am also a journalist writing regularly for publication in a newspaper, New Solidarity, a weekly magazine, Executive Intelligence Review, and a law enforcement intelligence bulletin, Investigative Leads. In my investigative reporting I have concentrated on studies of international terrorism, international drug-trafficking, and strategic intelligence and counter-intelligence assessments of international events.

2. I also serve as a security consultant to Lyndon H. LaRouche, Jr., the founder of the National Caucus of Labor Committees and a 1980 Democratic presidential candidate. My responsibilities in this area involve personally investigating and supervising investigations of individuals and organizations who, in their disagreements with the political ideas and goals espoused by LaRouche and the NCLC resort to violence, threats, harassment and unlawful actions against the NCLC. These investigations are utilized in security evaluations concerning Mr.

LaRouche's planned and proposed activities, our own publication to the general public of the names and activities of these political opponents and the reasons for their actions, complaints to appropriate law enforcement authorities and civil litigation by the NCLC against these unlawful activities. I have had major responsibilities in this area of work for the NCLC since 1973.

3. I make this affidavit in support of plaintiffs' application for a preliminary injunction in this action. As will be fully documented and set forth below, plaintiffs are presently the targets of bad faith law enforcement investigations by the defendants. These bad faith investigations, conducted by and through political opponents of the NCLC, are retaliatory in nature. The conduct retaliated against is plaintiffs exercise of their rights to speech, and association, to freedom of the press, to petition the Government for redress of their grievances, to register to vote and to vote and otherwise to achieve the full rights of American citizenship by fully and equally participating in the democratic processes of our social and political system.

4. The instant "Profiles of the Times" and related investigations conducted by the defendants in New York County do not occur in a political or a historical vacuum. The complainants and the defendants have been involved in past unlawful actions against LaRouche and the NCLC. Private organizations and individuals who are also involved in this investigation have a stated policy of generating bad faith law enforcement efforts to harass, deter, burden and chill plaintiffs in the exercise of their First Amendment and other Constitutional rights. The same private individuals and organizations were utilized by the FBI in its 10 year COINTELPRO program against the NCLC. This FBI program is presently under Constitutional challenge by plaintiffs in this District Court. The FBI has reopened its own unlawful investigations of the NCLC contemporaneously with defendants' actions. The New York County investigations and other current law enforcement investigations reflect the same techniques, personalities and motivations as were embodied in the unlawful COINTELPRO program.

5. This affidavit will therefore first detail the hostile and political adversary relationship between plaintiffs, defendants

and complainants in the New York County investigations. In addition, it will situate for the Court the activities of other political opponents of the NCLC who are intimately involved in the New York County bad faith activities. The affidavit will also identify the immediate political activities of the NCLC which have generated and motivated this bad faith attack.

6. On or about October 26, 1983, I began receiving information from confidential news source concerning the defendants' New York County investigation and other law enforcement investigations to be undertaken simultaneously. This information was specific and came from usually reliable sources. It is set forth in detail in this affidavit because the information received has been confirmed by subsequent developments in this investigation and others. The information indicates specific abuses of the Grand Jury process by the defendants and identifies the New York County investigation as one aspect of a bad faith investigative effort by political opponents of the NCLC undertaken in complete contravention of plaintiffs' Constitutional rights. Finally, events in the investigation itself demonstrating its permeation with bad faith and subsequent events known to me personally which corroborate the information provided by confidential sources, are specifically set forth.

The District Attorney and the Complainants Are Political Opponents of the NCLC

7. The complaint in this action describes the political activities and policies of the NCLC in some detail. In the past two years the NCLC and Lyndon LaRouche have become major factors in the deliberation of political policy in the Third World. Additionally, in 1981 political candidates endorsing LaRouche's policies received significant votes in elections in the United States. Mr. LaRouche has announced that he is available as a candidate for the Democratic nomination for the Presidency in 1984 under appropriate political conditions.

8. The political policies and programs advocated by LaRouche and the NCLC have also found an increasing audience

in Washington, D.C., a predictable result in terms of both the soundness of the policies and the political crisis facing our nation. In 1981 and 1982 the NCLC and associated organizations have also begun to have a significant impact on events in the Middle East. This represents the fruition of efforts begun in 1978 toward shaping the policies necessary for a real Middle East peace, policies of technology transfer and economic development for their entire Middle East region. In the course of these efforts the NCLC investigated and exposed the political factions in Israel and in the Arab states opposing such policies and acting to foment the climate of terror and economic degeneration characterizing the entire region. We identified these political factions as pawns in British intelligence operations which have historically used conflicts in the Middle East for British geopolitical goals and programs. These uses are in turn premised on the permanent economic underdevelopment of the region and the sponsorship of fundamentalist religious cults and movements in order to prevent the formation of stable nation states in the area. The major new development in the NCLC's efforts has been the capacity to intervene directly on political events in Israel through supporters of LaRouche and the NCLC in Israel.

9. These relative political successes have been met with intensified efforts by political opponents to defeat and discredit the NCLC's policies and programs. These efforts are not conducted in the arena of public debate. Instead they are conducted in campaigns of defamation and villification, threats to individuals who associate themselves with the NCLC, physical threats and assaults against members of the NCLC, and bad faith and retaliatory law enforcement actions.

A. District Attorney Morgenthau

10. Robert Morgenthau, the Manhattan District Attorney and the official who initiated and is supervising the present bad faith investigation of plaintiffs is personally associated with a political faction in Israel which has been the subject of repeated investi-

gative reports published by members of the NCLC internationally. This political faction is that of Ariel Sharon, Israel's former Defense Minister.

11. The NCLC has investigated and exposed the domination of the Sharon faction in Israel by organized crime elements engaged in arms trafficking and profiteering, political terrorism and drug trafficking activities internationally. This faction is otherwise identified with the so-called "Israeli Mafia" by law enforcement officials in the United States and other countries. The existence and continuing political operation of this faction is viewed by the NCLC and its collaborators in Israel as inimical to the interests of Israel and as a grave threat to Israel's national security.

12. Robert Morgenthau is the honorary chairman of PEACE (Prevention of Another Arab County in Eretz Israel), an organization founded on November 1, 1980 at the Roosevelt Hotel in New York City by Ariel Sharon. The organization is a propaganda arm of the Gush Emunim and Tekiyah Party in Israel. Its function is to propagandize in the United States for settlement of the West Bank and eventual annexation by the State of Israel.

13. Other Board members of PEACE are Meir Jolawitz, Chairman of the Jewish Defense League, Herbert Zweibon, Chairman of Americans for a Safe Israel, an organization intimately associated with the JDL, Louis Mortimer Bloomfield, a Canadian intelligence agent who participated with Roy M. Cohn in a company called Permindex which was blamed by the French Government for repeated assassination attempts against Charles DeGaulle, Meshulam Riklis, Rafi Eytan, the head of the Terror Against Terror unit of the Israeli Mossad, Arnold Forster, former General Counsel of the Anti-Defamation League of B'Nai B'rith, ("ADL") and General Zeevi, reputed to be the head of the Israeli mafia.

14. In our investigation of PEACE which included interviews with members of the organization, it was asserted by some of these individuals that Morgenthau was a close personal friend of Ariel Sharon. The disproportionate participation of the JDL and supporters of the JDL in PEACE is also noteworthy. The Israeli

Parliament is currently debating a ban of the Kach movement in Israel for its terrorist activities. The Kach movement is the JDL organization in Israel. The NCLC has been subjected to repeated harassment, threats and physical assaults by members of the JDL. Meir Kahane has identified Lyndon LaRouche and his associates as political opponents to be eliminated through terrorist action by the JDL. District Attorney Robert Morgenthau and Assistant District Attorney Harold Wilson have repeatedly refused to investigate these threats despite referral for such investigation by federal law enforcement authorities.

15. In August and September of 1980, Citizens for LaRouche, the campaign committee for Lyndon LaRouche's presidential bid, received numerous death threats and warnings of physical assaults from the JDL. Complaints concerning these JDL activities were delivered by Citizens for LaRouche to the U.S. Attorney's office in the Southern District of New York and to Robert Morgenthau. Despite advice by the U.S. Attorney for the Southern District of New York that the complaints seemed to specify the crime of aggravated harassment under the New York penal law, Morgenthau and Assistant District Attorney Harold Wilson refused to investigate or prosecute these JDL activities. Correspondence relating to these incidents is annexed as Exhibit "1".

16. A police official familiar with the JDL's campaigns against the NCLC has insisted to me that any attempt by him to investigate JDL harassment against LaRouche would result in his immediate dismissal from his job through the Manhattan District Attorney.

17. Meir Jolowitz stated to my investigator, Scott Thompson, that the JDL was receiving funding for harassment and physical attacks against LaRouche and the NCLC. (See Thompson affidavit, annexed as Exhibit "2"). Upon information and belief, Jolowitz has also received assurances from Morgenthau that any attacks against members of the NCLC by the JDL will not be prosecuted.

18. On March 2, 1983, Meir Jolowitz held a press conference in New York City to announce that the JDL would launch a

campaign of physical assaults against its enemies. Jolawitz and other JDL members appeared at that press conference brandishing shotguns and other weapons. Within 24 hours of that press conference telephone death threats and repeated nuisance telephone calls were received by NCLC members and school-board candidates associated with the NCLC. In Baltimore, Maryland an individual associated with the JDL approached Alan Ogden, a member of the NCLC, and threatened to kill Debra Freeman, an NCLC member and political candidate in Maryland. (See Ogden affidavit, annexed as Exhibit "3"). To date, the Manhattan District Attorney has refused to investigate these incidents despite a formal request to initiate such an investigation.

19. Shortly before the beginning of the instant New York County Grand Jury and other investigations of the NCLC conducted by the defendants, I began work with other reporters on a major story concerning West Bank real estate deals designed for major profit and maximum political destabilization impact in Israel by Kissinger Associates. Kissinger Associates is the current international consulting firm run by Henry Kissinger. The West Bank real estate deals involve individuals associated with Ariel Sharon and the PEACE organization in the United States. In fact, PEACE provides the propaganda veneer for the speculative real estate ventures. Two of the real estate cartels involved in the land purchases Jumbo and Israel and Samaria are directed by Roni Milo and Israel Shenker respectively. Both Milo and Shenker are Board members of the PEACE organization. Information on the West Bank story was provided by individuals sympathetic to the NCLC in Israel and through an investigation conducted under my supervision.

20. Publication of the names of the individuals involved in the West Bank venture and its political purposes by members of the NCLC and distribution of these publications in Israel, has, I believe, substantially slowed the progress of this proposed political destabilization for profit venture in Israel. I also believe that the instant investigation of the NCLC is in direct response and retaliation for these and other NCLC investigations and publications concerning the activities of the Sharon faction.

21. District Attorney Robert Morgenthau is also a former National Committee member of the Anti-Defamation League B'Nai B'rith and maintains a close collaborative relationship with individuals in that organization including Kenneth Bialkin, Justin Finger, Irwin Suall and Arnold Forster. The ADL has consistently defamed the NCLC and Lyndon LaRouche as "anti-Semitic" in a persistent international harassment campaign against LaRouche and his associates dating from 1977.

22. The NCLC identifies the ADL as an asset of an intelligence network spawned by Jay Lovestone in the United States and internationally, a network which is politically affiliated with the Second Socialist International. This intelligence network has been repeatedly implicated in international operations involving drugs and political terrorism.

23. In the United States, by the statements of ADL officials, ADL harassment efforts are concentrated on the use of law enforcement investigations and compliant law enforcement officials to achieve the ADL's declared aim of destroying the NCLC political organization. According to the statements of Abbott Rosen, a national official of the ADL, the ADL knows these investigations are discriminatory and without legal merit. The design of the harassment effort is to drive the NCLC "out of business". State and federal law enforcement investigations are the preferred vehicle for the ADL's illegal actions because private abusive legal actions expose the participant to civil discovery and might enhance rather than defeat the credibility of the NCLC. (See the Affidavit of Robin Hyman and the transcript annexed thereto, Exhibit "G" to the complaint).

22. Lucinda Franks, the District Attorney's wife, is an investigative reporter for the New York Times and the Daily News. Her works have focused on the terrorist Weathermen and other left-wing radical groupings and those works betray a complete empathy for the goals and beliefs of these organizations. Franks states that she is trusted by the Weathermen and has been trusted by similar federal fugitives.

23. The Weathermen and similar left-wing radical terrorist organizations have been opposed by the NCLC since 1968. The

NCLC has been subjected to verbal and written threats from these organizations, including the May 19th Coalition and Black Liberation Army, defamatory campaigns by their political associates and campaigns of harassment and physical assault by the Revolutionary Union, October League, Jewish Defense League, and the Youth International Party.

24. The District Attorney is a Board Member of the Puerto Rican Legal Defense and Education Fund. This organization has been investigated repeatedly by the NCLC concerning its support operations for the terrorist FALN and the specific details of these support operations have been published by members of the NCLC.

25. Aside from the District Attorneys' sponsorship, protection and advocacy for organizations and individuals who are politically opposed to the NCLC and are directly engaged in unlawful operations against the NCLC, the District Attorney was involved in two past incidents demonstrating his hostility against the NCLC and complicity in political harassment of the NCLC.

26. On December 16, 1981, Dennis King and Chip Berlet alleged in a press conference in Washington D.C. that the NCLC was tied to right-wing elements of the Central Intelligence Agency, including Edwin Wilson and Frank Terpil. Berlet and King cited tape recordings of conversations between Terpil and Mitchell Warbell, an individual involved in training NCLC security personnel, as the basis for these allegations.

27. The tape recordings were leaked to journalists by a detective in the New York City Police Department working under the supervision of District Attorney Morgenthau in the Terpil-Wilson investigation. In that case, the New York Times worked closely with District Attorney Morgenthau in demands for federal prosecution. Sergeant Melvin Woike, the police detective who obtained the search warrant on PMR's premises, was the arresting officer in the arrest of Frank Terpil.

28. The same December 16, 1981 press conference by King and Berlet called for federal and state prosecution of the NCLC

under a variety of bizarre legal pretexts including violations of the foreign agents registration act, the campaign finance laws, the espionage laws, and the Internal Revenue Code.

29. King is a "journalist" employed by Our Town, a Manhattan newspaper, and the ADL for purposes of penning outrageous defamations concerning Lyndon LaRouche and the NCLC and conducting and inciting harassment operations against LaRouche by violence-prone organizations. He is a former member of the Progressive Labor Party and a present close associate of the Youth International Party and the publishers of High Times Magazine, a magazine promoting drug use and paraphernalia. Berlet is a contributing editor to "High Times". He is similarly employed in unlawful harassment and defamatory activities against the NCLC by the ADL, the National Lawyers' Guild and the Public Eye. The Public Eye is a publication devoted to campaigns against the intelligence capabilities of the United States and local law enforcement agencies, particularly as those capabilities impact upon the operation of terrorist organizations.

30. In 1978, Paul Gallagher, a member of the National Committee of the NCLC had his skull fractured by David Newsome, an individual who engaged in occasional peripheral political activities with the NCLC.

31. The Manhattan District Attorney's office prosecuted Newsome for robbery and assault. Shortly before the trial Assistant District Attorney Robert Gottlieb demanded that Lyndon LaRouche appear at the trial in communications to Lyndon LaRouche's attorney. The reason for the appearance according to Gottlieb was that Newsome, a deranged individual, who insisted that he heard voices in his head, stated that Lyndon LaRouche had ordered him from Western Europe to assault Gallagher. Newsome's defense attorney was associated with the Jerusalem Foundation, an organization chaired by present ADL National Chairman Kenneth Bialkin.

32. As a security consultant to LaRouche working in conjunction with security professionals, I was extremely concerned by these developments. Shortly before Gottlieb's demand, which

our attorneys advised me made no legal sense, LaRouche had been the victim of a serious security incident when members of a terrorist organization had attempted to block his vehicle as it approached a major publicized speaking event in Detroit, Michigan.

33. I sought to arrange for appropriate security for LaRouche's testimony with Robert Gottlieb and with the District Attorney's office. All cooperation was refused by District Attorney Robert Morgenthau. Federal court intervention and a major political mobilization finally resulted in minimal protection being provided LaRouche for his testimony.

B. The New York Times

34. In October of 1979, the New York Times, one of the complainants to the District Attorney in the instant Grand Jury and other investigations of plaintiffs, published a three-part series on the National Caucus of Labor Committees in which the PMR Printing Company was identified as one of three companies "controlled by party associates."

35. The defamatory articles by The Times were published, according to co-author Paul Montgomery, for the purpose of launching law enforcement investigations against LaRouche and his associates *regardless of the truth or falsity of the allegations*. (See the affidavits of Paul Goldstein and Charles Tate annexed as Exhibit "4"). Specifically, The Times insisted that LaRouche be investigated for tax purposes (see Exhibit "5" annexed hereto) and called for the Federal Election Commission to deny Lyndon LaRouche's 1980 Democratic presidential campaign its federal matching fund application. The Times article also emphasized the necessity for investigations concerning LaRouche's ties to elements of the United States intelligence community.

36. On October 13 and 14, 1979, the New York Times' three-part series was re-published in the International Herald Tribune, a publication owned at the time by the New York Times Company, the Washington Post Company, and the Interna-

tional Herald Tribune Corporation. LaRouche sued the International Herald Tribune in France for criminal libel. The French court found the International Herald Tribune guilty of criminal libel, noting that no substantiation had been provided for any of the charges published by the New York Times. The French court was particularly disturbed that the New York Times libels had been circulated for the deliberate purpose of damaging Lyndon LaRouche's 1980 Democratic Presidential prospects. (A copy of the decision and a translation of that decision is annexed as Exhibit "6").

37. The New York Times' October, 1979 series of articles had originally been scheduled for publication in the summer of 1979. However, the National Caucus of Labor Committees learned of the pendency of the defamatory series and interviewed reporters Howard Blum and Paul Montgomery prior to publication concerning their motives and the content of the article. (See the Tate and Goldstein affidavits annexed as Exhibit "4").

38. As a result of Blum's and Montgomery's disclosures of malice during that interview, and widespread circulation of these disclosures by the NCLC, the Times publication was delayed. However, beginning on August 24, 1979, Our Town, a Manhattan weekly run by a convicted felon, Edward Kayatt began a defamatory series on the NCLC. The author of these articles was Dennis King.

39. The Our Town articles were promoted in the Village Voice by Joe Conason and others. King utilized defamations developed by Blum, Montgomery and the ADL in his series. The factual support for King's allegation that LaRouche and the NCLC were anti-Semitic was put forward in the instance statement that whenever LaRouche and the NCLC published attacks upon British geopolitical designs and policies, the word "British" was a codeword for "Jewish".

40. When the New York Times series was finally published in October, Our Town issued a similar call for law enforcement authorities to investigate LaRouche and individuals and firms associated with him, particularly for alleged election law viola-

tions and for alleged ties to American and foreign intelligence entities (See articles annexed as Exhibit "7").

41. The New York Times had published defamations concerning Lyndon LaRouche and the NCLC previous to the October 1979 treatment. The major previous defamatory piece occurred in 1974. Plaintiffs have alleged in a lawsuit pending in this District that the 1974 article was part of the "media manipulation" aspect of the FBI's COINTELPRO program against plaintiffs. The defamatory characterizations in the 1974 Times article were originated by the FBI.

42. The October, 1979 New York Times series and the Our Town series published previously were designed to be and were in fact incendiary. They resulted in the threats and assaults by the JDL and other terrorist groups against members of the NCLC which the Manhattan District Attorney refused to investigate.

43. Our Town has published numerous defamatory articles on LaRouche and his associates since the 1979-1980 Dennis King series. These publications included prominent front-page identification of LaRouche's New York address and pictures of that residence with the full knowledge that LaRouche is a target of death threats and violence from the Jewish Defense League and other terrorist organizations. Reporters for Our Town have actively harassed LaRouche's neighbors in an unsuccessful effort to force a "community" outcry against LaRouche's presence in the neighborhood.

C. Roy M. Cohn

44. Roy Cohn is apparently the second complainant to the New York District Attorney in the instant bad faith investigation of the plaintiffs. Cohn was the attorney for Our Town and Edward Kayatt when LaRouche sued Our Town for its 1979 defamatory series. Cohn has a close relationship to Edward Kayatt who started the Our Town newspaper following his return from jail on a federal counterfeiting and forgery conviction.

Cohn played a central role in the sponsorship of Our Town's 1979 defamatory series and subsequent harassment actions against LaRouche and the NCLC. Cohn was a leading participant in the Permindex organization, an organization identified by the French Government in assassination attempts against Charles DeGaulle.

THE INSTANT INVESTIGATION

45. On or about October 26, 1982 I began to receive information from confidential law enforcement and other news sources concerning the District Attorneys' investigation of the printing and publication of "Profiles of the Times". The reports uniformly stated that the NCLC was the target of this investigation and that it was a "political" investigation. My sources also stated that other bad faith investigations of the NCLC were being opened simultaneously at the behest of political opponents of the NCLC and that informants had been placed within the NCLC to gather information for these investigations and to disrupt the political activities of the NCLC. The aim of these law enforcement investigations was to permanently discredit the NCLC and Lyndon LaRouche and end the NCLC's burgeoning political influence through the infamy of repeated law enforcement investigations and coordinate national and international media defamations based upon these law enforcement investigations. Reporters would be leaked information from ongoing investigations. Reporters would also serve as "investigators" for the law enforcement agencies involved through their assignment on coordinate defamatory articles concerning the investigations according to these sources.

46. On October 25, 1982, a confidential source who has provided reliable information to me in the past stated to me that the New York Times intended to sue the NCLC in a civil case involving "Profiles of the Times" with an intention to "bleed" the NCLC financially.

47. On October 26, 1982, a confidential source who has provided reliable information in the past stated to me that he had

spoken with Leonard Harris of the New York Times General Counsel's office who stated that the New York Times was monitoring the District Attorney's criminal investigation and would pursue civil remedies.

48. On October 29, 1982, the same confidential source specified in paragraph 47 stated that he had spoken to John Klotz, an attorney representing Richard Dupont, who is apparently a witness against the NCLC in the Grand Jury proceedings. Dupont is presently facing a four-year prison sentence. Klotz stated that Roy Cohn did not want to pursue charges against the NCLC but that the New York Times was pressuring Cohn and pressuring District Attorney Robert Morgenthau to insure that such a criminal investigation took place. Two other sources specified to me that Cohn did not want to be involved in the complaint to the District Attorney's office and had been pressured into this position by the New York Times and Robert Morgenthau.

49. On November 18, 1982, following the November 16th search of PMR Printing Company's premises by 17 individuals identifying themselves as detectives assigned to the New York City Police Department, I received information from a confidential source who has provided reliable information to me in the past. He stated that "the operation is politically motivated and very big" and that the FBI was involved. He stated that the New York investigation was part of a grand scheme to "go all the way against the NCLC." The immediate aspect to the investigation was that indictments, even if they were based on fabricated charges, would irreparably damage NCLC's political relationship with law enforcement and governmental policy circles. This source specified that the undersigned, Paul Goldstein, and Robert Greenberg, were particular targets of the Grand Jury investigation for this reason.

50. The source identified in paragraph 49 specifically stated that the "local enemies of the NCLC in New York got together to review the situation and they decided that they had to move against the NCLC immediately. This decision has everything to do with Lyndon LaRouche's increasing political influence in the United States, the Third World, and Western Europe." The

approval to proceed with the indicated legal harassment efforts came from Henry Kissinger's circles in Washington, D.C. He stated that "they intend to go after the business dealings of the organization" with the idea of "knocking the NCLC out of the political picture."

51. On November 19, 1982, a confidential source who has provided reliable information to me in the past stated to me that there had been a meeting among Sulzberger of the Times, James Breslin of the Daily News, and Rupert Murdoch of the New York Post to discuss the Grand Jury investigation and other harassment efforts against the NCLC in the recent period. This source stated that civil lawsuits were being planned by this group on grounds of misrepresentation and defamation in order to drain NCLC's financial resources. This source stated that a campaign of defamatory media coverage was also planned by this group.

52. On November 16, 1982, a confidential source who has provided reliable information to me in the past stated that there was a meeting in the past 10 days involving the Special Agent in Charge of the FBI in New York, a representative of the U.S. Attorney's office, representatives of the New York Times, Roy Cohn and the Democratic National Committee. The discussion centered upon harassment operations against the NCLC with press attacks and civil lawsuits providing the main focus of discussion. The FBI representative stated in the meeting that the FBI would maintain a courtesy relationship with District Attorney Morgenthau's office but did not have statutory authority to become further involved in the District Attorney's investigation.

53. On November 27, 1982, a confidential source who has provided reliable information in the past stated to me that Henry Kissinger had met with Robert Morgenthau approximately three weeks ago. A call had come from Washington, D.C., to the Times concerning NCLC's alleged responsibility for the pamphlet, according to this source, although the District Attorney now believed that he had received overblown information. This source stated that the grand jury investigation was

aimed at financially draining the NCLC organization and at probing the NCLC's response to such an investigation in order to determine the strengths and weaknesses of individuals in the NCLC organization. He stated that the New York City Police detectives had issued blanket subpoenas to *every individual* on the premises of PMR Printing Company on the day of the intrusive search by 17 Detectives because they hoped "some of the NCLC bigshots" would come to PMR when they heard about the intrusive search. He stated that the State Grand Jury investigation was a preparatory "know your enemy" type of probe for a more far-reaching federal investigation.

54. On November 28, 1982, two confidential sources who have furnished reliable information to me in the past stated to me that Dennis King, Kalev Pehme, Edward Kayatt, and Joe Conason of the Village Voice were receiving materials from the Grand Jury's investigation into "Profiles of the Times" through Harold Wilson, the Assistant District Attorney in charge of the case.

55. On November 29, 1982 a confidential source in Chicago, Illinois stated to me that Chip Berlet of that city was coming to New York to do background work for the Manhattan District Attorney on his case against the NCLC.

56. According to the confidential sources specified in paragraph 54, Pehme and King stated that the District Attorney's forensic tests on the printing blades seized from the press at PMR were inconclusive and second phase tests were underway. In addition, the District Attorney's office was developing a new theory for somehow fabricating evidence of criminal activity against PMR and the National Caucus of Labor Committees involving chemical tests on the blades, tests on the newsprint utilized at PMR and some tests on type styles utilized by PMR.

57. The information provided by King and Pehme corresponds with information provided to me by employees of PMR Printing Company. According to Kenneth Kronberg, two detectives were parked outside the premises on November 30 and sought an unauthorized interview with Miles Robbins, a pressman at PMR concerning the printing blades. On November 30

and December 1, 1982, PMR received several calls from unsolicited customers asking for specimens of newsprint and type-styles utilized at PMR. According to Kronberg this activity was highly unusual, since PMR receives very few, if any, unsolicited customer calls.

58. According to the confidential sources specified in paragraph 54, District Attorney Morgenthau was upset with Edward Kayatt for offering a \$10,000 reward in Our Town newspaper for information leading to the conviction of the NCLC in the "Profiles of the Times" investigation because it opened any potential trial of the NCLC to defense charges that individuals were lying in order to receive the reward.

59. On November 30, 1982 a source who has provided reliable information to me in the past told me that private investigators and federal law enforcement personnel were present at the premises of PMR during the search conducted by the New York City Police Department. According to this source, when Sergeant Woike provided Kenneth Kronberg of PMR with a list of police officers on the search, he filled in the names of actual police detectives who were not present on the raid in order to cover up for the presence of the private investigators and federal law enforcement officials. The actual police officers were not assigned to the search on that day.

60. According to the same source specified in paragraph 59, private investigators associated with Kroll Associates, the District Attorney's office, and persons from Washington, D.C. had been in intensive discussions on November 29 and 30 concerning the Grand Jury investigation of the NCLC. Kroll Associates is a New York City private investigative firm which is paid, upon information and belief, to "investigate" and engage in political dirty tricks against the NCLC. Kroll is the detective agency employed by Willkie, Farr & Gallagher, the lawfirm for the ADL. Upon information and belief, Kroll also works on a contract basis for the Federal Bureau of Investigation.

61. The evaluation which emerged from the discussions specified in paragraph 59 was that the abusive grand jury investigation was to have been only one of a series of actions against the

NCLC to drain the NCLC's financial and other resources. The District Attorney's office had overplayed its hand in the operation and made this particular political operation against the NCLC into a major political issue. Major efforts therefore had to take place to discredit NCLC's sources in the law enforcement community and in governmental circles and to incriminate those sources. In addition, the District Attorney's investigation would now move into a new phase of fabrication of evidence against the NCLC in order to sustain the criminal action.

62. From October 25 through November 30, I received repeated reports from three confidential sources who have furnished reliable information to me in the past that the Federal Bureau of Investigation was involved in the District Attorney's investigation into "Profiles of the Times." The pretext for FBI involvement in the investigation according to one source was that interstate commerce violations attached to the investigation of the printers and/or distributors of "Profiles of the Times," and that the New York Times had sought FBI involvement. The other two sources stated that interstate commerce violations involved the NCLC. One of these sources stated to me that Roy Cohn and Henry Kissinger had previously complained to Justice Department officials in New York and in Washington, D.C. concerning coverage of the careers of Kissinger and Cohn in publications by members of the NCLC. Cohn and Kissinger sought prosecution under a criminal libel theory against members of the NCLC from local and national federal authorities.

63. On November 26, 1982, a confidential source who has provided reliable information to me in the past informed me that Tony Donaty was involved in the District Attorney's investigation of the NCLC and that Mr. Donaty was a tax investigator for the State of New York or the City of New York. On the same date a second confidential source reported to me that the New York City Police Department Bunco and Forgery squad was involved in the District Attorney's investigation of the NCLC.

64. The information set forth in paragraphs 46 through 63 is coherent with developments in the "Profiles of the Times" in-

vestigation and in other bad faith investigations opened of the NCLC simultaneously.

65. District Attorney Morgenthau's raid on PMR Printing Plant was preceded by a media campaign specifying the NCLC as the target of investigation. Our Town offered a \$10,000 reward for information leading to the prosecution and conviction of the NCLC for publication and distribution of "Profiles of the Times." (See Exhibit "E" to the Complaint). The reward offer and Our Town story were authored by Kalev Pehme who is specified by sources as receiving information from Harold Wilson concerning the instant Grand Jury proceedings. The Village Voice specified that the NCLC was the appropriate target for investigation in an article by Joe Conason (See Exhibit "D" to the Complaint). The alleged printing and distribution of the "Profiles" pamphlet itself received national media coverage.

66. Jonathan Beaty, a reporter for Time Magazine, contacted Robert Greenberg of the NCLC soliciting comments from Lyndon LaRouche on the "Profiles of the Times" investigation. Beaty was extremely solicitous in his attempts to appear to be friendly and stated he was doing an article for Time magazine on the incident. No such article was published. (Greenberg Affidavit, Exhibit "I" to the Complaint). I have subsequently learned that Beaty has been a long time press operative utilized by the FBI and the U.S. Department of Justice.

67. Manny Goldstein, a misguided individual associated with the Jewish War Veterans and deployed by Dennis King in operations against LaRouche and the NCLC stated to my investigators that he was in contact with the District Attorneys' office concerning the Profiles of the Times investigation and believed they had not yet subpoenaed the truck driver at PMR. Goldstein insisted that such a subpoena was critical. Shortly after this telephone conversation, Jesus Gonzalez was subpoenaed to appear before the Grand Jury by detectives from the District Attorney's office. He is the truck driver at PMR.

68. As is set forth in the Affidavits of Kenneth Kronberg (Exhibit B to the Complaint) and Nancy Shavin (Exhibit H to the Complaint), David Saunders, a former employee of PMR

stated to Nancy Shavin that he was privy to the details of the District Attorneys' investigation and it included major investigations of PMR under tax and labor laws in addition to the instant investigation.

69. Soon after the District Attorney's search of PMR, PMR received a request from the City of New York to audit its books and records for tax purposes. The City refused to provide a letter to Counsel for PMR specifying that this audit was an audit undertaken in the normal course of its tax enforcement responsibilities. When the audit did in fact take place, the City stated that the audit request had been the result of a mistake by the City and was due to the fact that PMR had requested a tax refund. (Affidavit of Kenneth Kronberg, Exhibit "B" to the complaint.).

70. On or about November 16, 1982, a law enforcement investigation was opened on members of the NCLC by and through the Federal Bureau of Investigation in Baltimore, Maryland. This investigation began contemporaneously with the New York County investigations by defendants. The investigation concerns the campaign finances of NCLC member and National Democratic Policy Committee backed candidate Debra H. Freeman. Freeman received 20% of the vote in her primary contest against Congresswoman Barbara Mikulski. Freeman won some precincts in working class districts and her vote was in the 40-49% range in those districts of South Baltimore. The investigation began with the same media defamation and targeting campaign as characterized the New York County investigation.

71. The Baltimore Evening Sun began "investigation" of Freeman immediately after the primary campaign, subsequently publishing a defamatory series attacking the candidate, Lyndon LaRouche and the NCLC. Many of the defamatory characterizations employed by the Evening Sun reporter were originally developed by the FBI concerning the NCLC in its 10 year "domestic security investigation" of LaRouche and the NCLC. The FBI's domestic security investigation is the subject of a lawsuit in this District, *LaRouche v. Webster*, 75 Civ. 6010 (MJL). The Sun articles called for immediate federal investiga-

tion of Freeman. The motivation for the investigation, according to a Sun editorial, is that the candidate had received too many "uninformed" votes. The FBI announced the opening of the investigation through an interview granted to the Baltimore Evening Sun. Such statements by the FBI were completely contrary to Justice Department policies concerning comment upon preliminary investigations.

72. The NCLC has moved for a preliminary injunction against this investigation in *LaRouche v. Webster*, 75 Civ. 6010 (MJL) and is seeking to deposition the Baltimore Evening Sun reporter who authored the series, Mark Arax, concerning his relationship with the FBI. Both the FBI and the reporter have moved to quash deposition subpoenas issued in this lawsuit. Mr. Arax is represented by Venable, Beatjer and Howard in Baltimore, the lawfirm of former Attorney General Benjamin Civiletti. Mr. Civiletti had threatened to sue the Lyndon LaRouche and individuals and organizations associated with plaintiffs for published allegations against Civiletti concerning the ABSCAM investigations. Mr. Civiletti did not pursue his threat of a defamation suit.

73. On or about December 23, 1982, Robert Greenberg of the NCLC interviewed Ed Jagen of the Investigative Services Division of the Washington, D.C. Metropolitan Police Department. Detective Jagen, who works in police intelligence stated that he was involved in a federal investigation of the NCLC and Lyndon LaRouche which did and would "overlap" with the "Profiles of the Times" investigation. (Greenberg Affidavit, Exhibit "I" to the Complaint). This statement makes no legal sense except in the context of the plan to launch repeated bad faith investigations of LaRouche and the NCLC, specified by my confidential sources.

74. During the weeks of March 2-March 16, I received repeated warnings from confidential sources who have provided reliable information in the past that the Federal Bureau of Investigation is intent upon investigating and prosecuting the NCLC under any fabricated pretext available to that agency. To that end the FBI has initiated a program of infiltration of the

NCLC and entrapment and "sting" operations. These operations are to be legally justified by the FBI under new guidelines promulgated by the Department of Justice allowing intrusive investigations of "dormant" "violence-prone" groups.

75. From 1968 through 1977 the National Caucus of Labor Committees and predecessor organizations were investigated by the FBI under the Internal Security Laws of the United States. This investigation did not result in one indictment or presentment to a Grand Jury. As is set forth in *LaRouche v. Webster*, 75 Civ. 6019 (MJL) S.D.N.Y., the National Caucus of Labor Committees and its members were subjected to unlawful FBI COINTELPRO tactics throughout the course of the investigation.

76. FBI actions against the NCLC or its members during the course of the domestic security investigation included unlawful interference in political campaigns of political candidates, direct FBI intimidation and harassment of candidates and their families, media defamations of candidates, and the funneling of derogatory information concerning candidates to their political opponents. The FBI collaborated with state officials in selective enforcement of local ordinances against NCLC political organizing activities. The FBI collaborated with media resources and private organizations, including the AFL-CIO, the League for Industrial Democracy and the ADL in defamation and harassment activities against the NCLC. The FBI encouraged and condoned physical assaults on NCLC members by terrorist organizations which it characterized as rival political groups, including the Weathermen, the Revolutionary Union and the Black Panther Party. The FBI consistently monitored and acted to disrupt NCLC sources of financial support.

77. As is set forth in *LaRouche v. Webster*, many of the media defamations against the NCLC currently in circulation were developed originally by the FBI in the course of its unlawful COINTELPRO program. These defamations are now circulated by the same media conduits and private organization sources utilized by the FBI in that unlawful program. The FBI also acted to discredit and disrupt newsgathering activities by NCLC

members and the relationship between NCLC members and news sources.

78. In 1980, when Lyndon LaRouche received public financing in his bid for the Democratic presidential nomination, LaRouche's political opponents, including the ADL, the New York Times, Our Town and members of the Democratic National Committee launched a national media campaign denouncing the grant of Federal matching monies and demanding either a change in the Federal Election Campaign Act to prevent similar future occurrences or a full FEC investigation of LaRouche and his campaign committee. The articles calling for this investigation and the circumstances surrounding these articles are otherwise set forth in paragraphs 34 through 42, *supra*, and Exhibits "E" and "G" to this Affidavit.

79. The FEC investigation which resulted from this media campaign was enjoined by this Court in *Dolbeare v. Federal Election Commission*, 81 Civ. 4468 (CLB) in 1982, with the Court finding it "abusive" and beyond the statutory authority of the Federal Election Commission.

80. Officials of the ADL and Chip Berlet are presently defendants in a \$70 million dollar civil rights and libel suit brought by the National Anti-Drug Coalition in the Northern District of Illinois. In order to sustain any claim of truth in their defense, the defendants in that case must prove that members of the NCLC are involved in illegalities and misrepresentations, a charge which they cannot prove. I believe that the instant Grand Jury proceedings and investigations and the participation by the ADL and Chip Berlet in these investigations are directly related to the efforts by defendants to develop defenses to that lawsuit and to gain leverage in that lawsuit.

81. I am personally aware of the response of many public figures to investigative exposes concerning them published in the Executive Intelligence Review or in other publications by the NCLC. These public figures, including Henry Kissinger, say the materials are defamatory but to pursue legal remedies would give the NCLC credibility and would expose the alleged victim to the defense of "truth". This response is circulated for

its public relations effect. As is directly stated by ADL official Abbott Rosen, bad faith law enforcement investigations do not have the same risks as civil lawsuits. Moreover, in a situation where the NCLC is repeatedly investigated by federal and state agencies, parallel civil claims by private plaintiffs carry more weight than if left on their own terms. Civil litigation, under colorable claims, is a most effective means to drain the resources of a political organization like the NCLC and to divert its energies from its political organizing activities.

82. I am informed by my attorneys that it is an abuse of the Grand Jury process to utilize that process to gather information for civil discovery and lawsuit purposes and to utilize that process as a "fishing expedition" to develop information concerning a political organization for collateral purposes. I am also informed that it is an abuse and unlawful to leak Grand Jury and other investigative materials to unauthorized individuals whether they be private individuals or law enforcement authorities. These are precisely the activities specified to me by my confidential sources as the predominant activities of the New York County Grand Jury. The source reports are corroborated by subsequent actions in the investigations by the District Attorney, the FBI and the private individuals and organizations specified.

83. I believe that the present investigations are undertaken solely to stigmatize members of the NCLC and to burden and deter them in the exercise of their First Amendment and other rights. They are a direct bad faith law enforcement response by and through political opponents of the NCLC to the growing national and international political influence of the NCLC, the electoral results achieved by members of the NCLC and La-Rouche's tentative announcement of a 1984 Presidential candidacy. The investigations are undertaken with the direct knowledge of the defendants and political opponents of the NCLC that the Government and other officials to whom the NCLC addresses its political policies and programs are extremely sensitive to any association with individuals who are targets of law enforcement investigation, regardless of the *bona fides* of the investigation. The investigations are unlawful investigations. They have caused and will cause plaintiffs irreparable

harm and function solely to chill plaintiffs' in the exercise of their Constitutional rights. As such, these investigations should be preliminarily and permanently enjoined by this Court.

/s/ Jeffrey Steinberg

JEFFREY STEINBERG

Sworn to before me this
day of March, 1983.

/s/ George Canning

NOTARY PUBLIC

GEORGE CANNING

Notary Public, State of New York

No. 01-4788778

Qualified in New York County

Commission Expires March 30, 1983

AFFIDAVIT OF ROBERT GREENBERG

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**NATIONAL COMMITTEE and NATIONAL EXECUTIVE
COMMITTEE OF THE NATIONAL CAUCUS OF LABOR
COMMITTEES,**

Plaintiffs,

vs.

**ROBERT MORGENTHAU, District Attorney of
New York County and HAROLD WILSON,
Assistant District Attorney of New York
County,**

Defendants.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ROBERT GREENBERG, being duly sworn, deposes and says:

1. I am a member of the National Caucus of Labor Committees and reside in New York, N.Y.

2. On December 23, 1982, in the course of a general investigation conducted by the National Caucus of Labor Committees of Kroll Associates, a New York private investigations agency, I contacted Detective Ed Jagen of the Investigative Services section of the Washington, D.C. Metropolitan Police Department. Detective Jagen works in police intelligence. I was seeking to determine the extent of the relationship between Kroll Associates and various police intelligence departments which had formerly been active in the national security investigation of the National Caucus of Labor Committees.

3. In initiating the discussion with Detective Jagen I stated that Jules Kroll had told me to call him and I told him that I was a free-lance investigator, seeking to do the definitive expose of

the National Caucus of Labor Committees and Lyndon LaRouche. Initially Mr. Jagen was very coy and said only that the name "Kroll" did ring a bell. I pressed him for information on LaRouche and the NCLC. He stated that he knew a lot about LaRouche and the NCLC but that it was all material which was currently under investigation.

4. I said that Mr. Kroll had mentioned something about an FBI investigation which was going on and asked him for details concerning the investigation. He said that he, Jagen, should not have mentioned the investigation in the first place but the only reason he did was because he knew I already knew what it was about. I asked him if the FBI investigation had anything to do with an investigation being conducted into the printing of Profiles of the Times, an allegedly bogus supplement to the New York Times, by the Manhattan District Attorneys' office. He stated that he knew about the Manhattan District Attorney's investigation, and the New York investigation and the Washington, D.C. investigation would overlap.

5. I then told him that I had gotten in touch with Kroll because I believed that Kroll was working on the same investigation. Mr. Jagen said that Kroll was a contract employee for the Federal Bureau of Investigation. He said that the Bureau paid Kroll for his information. He stated that Mr. Kroll, being "private" was in a much better position than he to tell me about these investigations. He also stated that Kroll knew that Jagen could not talk about the investigations and that is why Kroll referred me to Jagen. By this I took him to mean that Kroll had not wanted to talk to me about the investigations and had referred me to Jagen in an attempt to run me around in circles. He confirmed that this was probably true.

6. Jagen stated that the reason he could not tell me anything was that he was sworn as a witness in a Federal Grand Jury in Washington, D.C. which was investigating Lyndon LaRouche and the National Caucus of Labor Committees although Mr. LaRouche was not the key target in the investigation.

7. On October 29, 1982 I took a call from a journalist who called the National Caucus of Labor Committees seeking an

interview or comment from Lyndon LaRouche. The man identified himself to me as Jonathan Beaty of Time Magazine. He stated that he was doing a story for Time on the "Profiles of the Times" pamphlet and wanted Mr. LaRouche's comment. He claimed to be a regular follower of the NCLC and went out of his way to be friendly. I told him that I would seek a comment from Mr. LaRouche for his story which I did and which I gave him. The story has not been published in Time Magazine to date.

/s/ Robert Greenberg

ROBERT GREENBERG

Sworn to before me this
24th day of March, 1983.

/s/ George Canning

NOTARY PUBLIC
GEORGE CANNING

Notary Public, State of New York

No. 01-4738778

Qualified in New York County

Commission Expires March 30, 1983

**MOTION FOR RECUSAL
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

**NATIONAL COMMITTEE and NATIONAL EXECUTIVE
COMMITTEE OF THE NATIONAL CAUCUS OF LABOR
COMMITTEES,**

Plaintiffs-Appellants,

vs.

**ROBERT MORGENTHAU, District Attorney of
New York County and HAROLD WILSON,
Assistant District Attorney of New York County,**

Defendants-Appellees.

83-7326

Plaintiffs-Appellants, by their undersigned attorneys, hereby move that the Honorable George C. Pratt, Circuit Judge, disqualify himself, pursuant to 28 USC 455(a) and 455(b)(1), from hearing and deciding this appeal, on the grounds that Judge Pratt's impartiality might reasonably be questioned and Judge Pratt may be personally biased and prejudiced toward Plaintiffs-Appellants. In support of this motion, Plaintiffs-Appellants state as follows:

1. Plaintiffs-Appellants are the governing bodies of a political association, the National Caucus of Labor Committees ("NCLC"). The chairman of the NCLC is Lyndon H. LaRouche, Jr. Mr. LaRouche is a member of the National Executive Committee of the National Caucus of Labor Committees, one of the Plaintiffs-Appellants. Mr. LaRouche has also been chairman of the advisory board of the National Democratic Policy Committee, a political action committee publicly associated with LaRouche and the National Caucus of Labor Committees. The Complaint and Affidavits submitted in the United States District Court for the Southern District of New York which are the subject of this appeal, clearly identify the publications and political organiza-

tions associated with Lyndon LaRouche and the National Caucus of Labor Committees.

2. Prior to his nomination to the Second Circuit, Judge Pratt was a United States District Judge in the Eastern District of New York. Judge Pratt was the trial judge in some of the most widely publicized "ABSCAM" corruption cases, including that of Senator Harrison A. Williams.

3. Lyndon LaRouche, other members of the National Committee and National Executive Committees of the NCLC and other members of the NCLC published numerous articles which attacked Judge Pratt personally because of his conduct in ABSCAM cases. The articles disputed Judge Pratt's integrity personally and judicially. The articles called for Judge Pratt's removal from the bench by impeachment. Plaintiffs-Appellants publicly campaigned throughout the United States for this result. Plaintiffs-Appellants also vigorously opposed Judge Pratt's appointment to the Second Circuit in a public campaign seeking a negative vote on his appointment by the Senate Judiciary Committee.

4. Upon these facts, which are fully elaborated in the annexed Affidavit of Barbara Boyd, the interests of justice require the voluntary withdrawal of the Honorable George C. Pratt, Circuit Judge, to preserve the appearance of impartiality.

5. No delay or prejudice will result from a voluntary withdrawal, since this appeal could be heard by a panel of this Circuit without Judge Pratt's participation. The appeal has been fully briefed. Disposition awaits only oral argument and a decision.

6. This motion is based on the annexed affidavit of Barbara Boyd and the files and records in this case.

7. No other application for the relief sought herein has been made. Plaintiffs-Appellants were notified by the undersigned counsel that Judge Pratt would be on the panel hearing this appeal only on Friday, September 30th, 1983, when counsel learned of the panel which would hear this appeal. This appli-

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cation is being made in the shortest possible period of time available under the circumstances.

Dated: New York, N.Y.
October 3, 1983

/s/ Robert Rossi

ROBERT ROSSI

/s/ Odin P. Anderson

ODIN P. ANDERSON
Attorneys for Plaintiffs-Appellants
One Longfellow Place
Boston, Mass. 02114
617-720-1800

3. Prior to his appointment to this Court, Judge Pratt was a United States District Judge in the Eastern District of New

York. Judge Pratt was the trial judge in the ABSCAM corruption cases tried in the Eastern District including the case of former Senator Harrison Williams.

4. Plaintiffs-Appellants on this appeal are the National Committee and National Executive Committee of the National Caucus of Labor Committees. The National Committee and National Executive Committee of the NCLC are the governing bodies of a political association founded by Lyndon H. LaRouche, Jr.

5. The NCLC political association and the National Democratic Policy Committee campaigned nationally against the ABSCAM prosecutions from their inception as abhorrent to the most fundamental principles of United States Constitutional law.

6. The campaign against ABSCAM included publication of numerous articles and pamphlets for national circulation which were extremely critical of Judge Pratt by name in both a judicial and personal capacity. Similar criticism of a professional and personal nature was directed at prosecutor Thomas Puccio. The NDPC alleged that Puccio deliberately set-up the ABSCAM prosecutions in a fashion which would guarantee trial before Judge Pratt. The NDPC stated that the ABSCAM prosecutions were politically motivated prosecutions carried out illegally by the Carter controlled U.S. Department of Justice.

7. Thomas Puccio and Attorney General Benjamin Civiletti considered the NDPC's publications concerning their role in ABSCAM to be defamatory. Puccio and Civiletti threatened the NDPC with lawsuits although no suits were filed.

8. Some of the articles published during this campaign demanded Judge Pratt's impeachment. The articles uniformly attacked Judge Pratt's personal integrity. The National Democratic Policy Committee sponsored political events and rallies in the New York-New Jersey area and nationally opposing the ABSCAM prosecutions and singling out prosecutor Thomas Puccio and Judge Pratt for their conduct of the prosecutions. The NDPC conducted a major national lobbying campaign for Judge Pratt's impeachment and Senator Harrison Williams' exonera-

tion on the floor of the United States Senate. The National Democratic Policy Committee also vigorously opposed Judge Pratt's nomination to this Court and directed a fact sheet and public appeals to the Senate Judiciary Committee in an effort to block the appointment.

9. Annexed to this Affidavit are excerpts from some of these publications. The exhibits represent a sampling of the published attacks on Judge Pratt. Exhibit "A" consists of excerpts from the September 22, 1981 edition of Executive Intelligence Review, a weekly national and international news magazine published by members of the National Caucus of Labor Committees. This issue of EIR was devoted to ABSCAM. One article is by Jeffrey Steinberg and calls for the censure of Judge Pratt. The same article directly accuses Judge Pratt of covering up illegalities committed by the FBI and prosecutor Thomas Puccio in the ABSCAM cases.

10. Jeffrey Steinberg is a member of the National Committee of the National Caucus of Labor Committees and submitted the main affidavit in support of the motion for a preliminary injunction in the proceedings in the United States District Court which are at issue on this appeal.

11. The same issue of Executive Intelligence Review presented as Exhibit "A" contains an article by Lyndon H. LaRouche, Jr. which calls for the impeachment of Judge Pratt and also calls upon the U.S. Senate to repudiate the "irrationalist rantings of Judge Pratt." Lyndon H. LaRouche is the founder of the National Caucus of Labor Committees and a member of the National Executive Committee of the NCLC.

12. Exhibit "B" is relevant excerpts from a leaflet circulated by the National Democratic Policy Committee nationally and particularly in New York and New Jersey in October of 1981. The leaflet calls for Judge Pratt's impeachment, states that Judge Pratt's ABSCAM rulings were "corrupt" while placing those decisions in the context of Judge Pratt's known political associations.

13. Exhibit "C" is an article which appeared in the March 4, 1982 edition of New Solidarity, a bi-weekly newspaper pub-

lished by members of the National Caucus of Labor Committees. New Solidarity is distributed nationally with widespread street distribution and sales in the New York-New Jersey area. The article was co-authored by the affiant. The article is a personal attack on Judge Pratt and begins with the announcement that the National Democratic Policy Committee will oppose Judge Pratt's nomination to this Court on the grounds that Judge Pratt has "introduced abhorrent Nazi criminal law precedents into the American legal system."

14. The New Solidarity article suggests that Judge Pratt's political sponsor for appointment to this Court is Roy M. Cohn, one of the complainants in the "Profiles of the Times" New York County Grand Jury investigation under review. The article itself summarizes a brief which was presented by the National Democratic Policy Committee to all members of the U.S. Senate, Senate staff and other governmental officials in Washington in preparation for the debate on the expulsion of Senator Harrison Williams.

15. Exhibit "D" is a fact sheet distributed by the National Democratic Policy Committee to staff and members of the U.S. Senate and other interested parties nationally and in Washington, D.C. opposing Judge Pratt's appointment to this Court.

16. The relationship of the Executive Intelligence Review, New Solidarity and the National Democratic Policy Committee to Plaintiffs-Appellants are clearly set forth in the Complaint and supporting Affidavits in the record on this appeal. The Complaint and supporting Affidavits specify that the bad faith prosecutions under review are specifically retaliatory against all individuals and organizations politically associated with Lyndon H. LaRouche.

17. The Complaint and supporting Affidavits seek federal injunctive relief against bad faith state law enforcement investigations and prosecutions. Defendants in the proceedings below seek to apply a variety of criminal statutes to a publication which they allege to be scurrilous and defamatory. Plaintiffs-Appellants allege in the Complaint that the investigations are retaliatory and designed to harass and burden them in the exercise of their

political rights. At issue on this appeal, is the propriety of the District Court's dismissal of plaintiff's federal civil rights complaint.

18. The nature of the complaint under review and Judge Pratt's previous relationship to Plaintiffs-Appellants outlined above make me severely doubt whether Judge Pratt can fairly decide on this appeal. It is probable that Judge Pratt is personally prejudiced or biased toward Plaintiffs-Appellants as a result of the attacks upon his character by Plaintiffs-Appellants stemming from his conduct of the ABSCAM cases. The issues on this appeal would directly implicate such a bias. At the very least, Judge Pratt's impartiality might reasonably be questioned on the facts presented, requiring his disqualification from further proceedings on this appeal.

/s/ Barbara M. Boyd
BARBARA M. BOYD

Sworn to before me this
3rd day of October, 1983.

/s/ George Canning
NOTARY PUBLIC

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

U.S. CONSTITUTION: AMENDMENT 1

Religious and political freedom.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. CONSTITUTION: AMENDMENT 4

Unreasonable searches and seizures.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONSTITUTION: AMENDMENT 5

Criminal actions—Provisions concerning—Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of

law; nor shall private property be taken for public use, without just compensation.

U.S. CONSTITUTION: AMENDMENT 9

Rights retained by people.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

U.S. CONSTITUTION: AMENDMENT 14

Section 1. Citizens of the United States.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. §1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of

Columbia.

(As amended Dec. 29, 1979, P. L. 96-170, § 1, 93 Stat. 1284.)

28 U.S.C. §1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

(Dec. 1, 1980, P. L. 96-486, § 2(a), 94 Stat. 2369.)

28 U.S.C. §1343. Civil rights and elective franchise

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42 [42 USCS §1985];

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

28 U.S.C. §2201. Creation of remedy

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1954 [26 USCS §7428], any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. §2202. Further relief

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

28 U.S.C. §455. Disqualification of justice, judge, magistrate, or referee in bankruptcy

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director,

adviser, or other active participant in the affairs of the party, except that:

- (i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;
- (ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;
- (iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
- (iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e) No justice, judge, or magistrate shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

RULES OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

§0.14. Quorum:

(a) Two judges shall constitute a quorum. If, at any time, a quorum does not attend on any day appointed for holding a session of the court, any judge who does attend or, in the absence of any judge, the clerk may adjourn the court for such

time as may be appropriate. Any judge attending when less than a quorum is present or at any time when the court is in recess may make any necessary procedural order touching any suit or proceeding preparatory to hearing or decision of the merits. [See Part II, § 27(e).]

(b) Unless directed otherwise, a panel of the court shall consist of three judges. If a judge of a panel of the court which has heard argument or taken under submission any appeal, petition or motion shall be unable to continue with the consideration of such matter by reason of death, illness, resignation, or incapacity, or shall be relieved of such consideration at his request, the two remaining judges will determine the matter if they are in agreement and neither requests the designation of a third judge. If they are not in agreement or either requests such a designation, the chief judge will designate another circuit judge to sit in place of the judge who has become unable to continue or has been relieved. He shall advise the parties of such designation, but no further argument will be had or briefs received unless otherwise ordered.

No. 83-1124

Office - Supreme Court, U.S.
FILED

MAR 7 1984

ALEXANDER L. STEVAS
CLERK

IN THE
Supreme Court of the United States

October Term, 1983

NATIONAL COMMITTEE and NATIONAL EXECUTIVE
COMMITTEE OF THE NATIONAL CAUCUS OF LABOR
COMMITTEES,

Petitioners,

against

ROBERT MORGENTHAU, DISTRICT ATTORNEY OF NEW YORK
COUNTY, and HAROLD WILSON, ASSISTANT DISTRICT
ATTORNEY OF NEW YORK COUNTY,

Respondents.

**BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI**

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Counter-Statement of Questions Presented

1. May a federal District Court summarily dismiss a civil rights complaint seeking to enjoin a state Grand Jury investigation, when the complaint fails to set forth specific facts showing that the investigation is unconstitutional?

The United States Court of Appeals for the Second Circuit answered this question in the affirmative.

2. Is a federal judge required to recuse himself on a motion for recusal by a party before him, when the party alleges that it has publicly disputed his personal and judicial integrity and campaigned for his impeachment because of his conduct of another proceeding, but the judge himself is unaware of the alleged attacks?

The Honorable George C. Pratt of the United States Court of Appeals for the Second Circuit answered this question in the negative.

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No. 83-1124

IN THE
Supreme Court of the United States
October Term, 1983

NATIONAL COMMITTEE and NATIONAL EXECUTIVE
COMMITTEE OF THE NATIONAL CAUCUS OF LABOR
COMMITTEES,

Petitioners,

against

ROBERT MORGENTHAU, DISTRICT ATTORNEY OF NEW YORK
COUNTY, and HAROLD WILSON, ASSISTANT DISTRICT
ATTORNEY OF NEW YORK COUNTY,

Respondents.

**BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI**

Preliminary Statement

Petitioners seek a Writ of Certiorari to review an order entered October 11, 1983, by the United States Court of Appeals for the Second Circuit. By that order, the Court of Appeals affirmed an order entered April 13, 1983, in the United States District Court for the Southern District of New York (the Honorable Vincent L. Broderick, D. J.). The District Court's order denied petitioners' motions

for a temporary restraining order and a preliminary injunction and dismissed their complaint for failure to state a claim. Petitioners had sought to enjoin a New York County Grand Jury investigation into possible criminal offenses relating to the printing and distribution of a publication entitled *Profiles of the Times*.

Statement of the Case

A. The Commencement of the Grand Jury Investigation

On Saturday, October 23, 1982, unidentified persons distributed a twelve-page tabloid entitled *Profiles of the Times*, for insertion into the next day's Sunday *New York Times*. The tabloid was printed on paper and used typefaces similar to those of the *New York Times Book Review*. It contained fraudulent articles of a scurrilous nature about public officials, candidates for political office and other persons, as well as photographs of those same individuals and fraudulent advertisements. Some 7,000 copies of this publication were allegedly distributed in Manhattan and Queens.

Shortly thereafter, a New York County Grand Jury commenced an investigation into possible criminal offenses related to the printing and distribution of *Profiles of the Times*, and a warrant issued authorizing the search of premises occupied by PMR Printing Co., Inc. ("PMR"), in Manhattan. On the instructions of a New York County Assistant District Attorney, police officers who executed the warrant served subpoenas on twenty-three persons found on the premises who were or appeared to be employees or officers of PMR. Nine of the persons served are allegedly

members of the National Committee and National Executive Committee of the National Caucus of Labor Committees ("the NCLC").

B. The NCLC's Motion to Intervene, Quash the Subpoenas and Enjoin the Investigation

On December 2, 1982, the NCLC moved in New York State Supreme Court to intervene in the Grand Jury proceedings, on the grounds that it was a real party in interest. The NCLC also moved to quash the subpoenas and to enjoin the Grand Jury investigation, on the grounds that the Grand Jury was being abused by the District Attorney and others in a bad-faith attempt at political harassment.

The NCLC's motion to intervene was denied on December 7, 1982.*

C. The Proceedings on the Instant Complaint in the District Court

1. The Complaint

On March 25, 1983, the NCLC filed the instant complaint. The NCLC alleged that the Grand Jury investigation had been undertaken in bad faith, for purposes of harassment and without a reasonable possibility of obtaining a conviction. The NCLC charged that respondents undertook the investigation to retaliate against the NCLC for exercising its constitutional rights and to deter the NCLC and its

* The Appellate Division affirmed the Supreme Court's ruling on June 23, 1983, two months after the dismissal of the NCLC's federal complaint. 95 A.D.2d 714. The New York Court of Appeals dismissed the NCLC's motion for leave to appeal. 60 N.Y.2d 652.

members from exercising their rights. The NCLC also charged respondents with disseminating the results of the investigation to third parties who are political opponents of the NCLC, for use in civil litigation against the NCLC. Finally, the NCLC alleged that the Grand Jury had no jurisdiction over the subject of its investigation, and that respondents lacked legal authority for their actions (A18-42*).

The NCLC requested a declaratory judgment and an order permanently enjoining the Grand Jury investigation (A42). In addition, the NCLC moved for a preliminary injunction and a temporary restraining order staying the Grand Jury proceedings.

2. Respondents' Affidavit and Memorandum of Law in Opposition to the Motion for a Temporary Restraining Order

Assistant District Attorney Harold J. Wilson submitted an affidavit and memorandum of law in opposition to the NCLC's motion for a temporary restraining order. Assistant District Attorney Wilson stated in his affidavit that the Grand Jury was investigating crimes including forgery, criminal possession of a forged instrument, possession of forgery devices, criminal simulation, conspiracy, and unspecified violations of the New York General Business Law. On behalf of both respondents, Assistant District Attorney Wilson denied that the NCLC and its members were targets of the investigation, that the investigation had been initiated in bad faith and had no chance of success, that it was designed to harass the NCLC and deter the exercise of political

* Parenthetical references preceded by 'A' are to the Appendix to Petition for a Writ of Certiorari.

rights, and that information generated in the investigation was being leaked to private persons for use in civil litigation.

In their memorandum of law, respondents argued that a temporary restraining order should be denied because (1) the NCLC lacked standing to bring its action, (2) the NCLC was precluded by the New York Supreme Court's ruling from maintaining its claim of bad faith, and (3) the NCLC had failed to show either irreparable harm or a likelihood of success in establishing bad faith.

3. The Court's Findings

On April 8, 1983, after argument by counsel for both sides, the NCLC's motions were denied and the complaint was dismissed. It was agreed at the outset of this colloquy that *Profiles of the Times* had in fact been disseminated and that the Grand Jury was investigating a complaint about it. With respect to the NCLC's claim of bad faith, Judge Broderick stated to counsel for the NCLC:

Well, now, Mr. Anderson, I have been over your papers very carefully and they make wide ranging claims of conspiracies between Mr. Morgenthau and the New York Times, Mr. Cohn, Mr. Kissinger, the JDL, the ADL, that had impact in New York, in Maryland, in the Middle East, I guess in Washington, but the only allegation I find in all of your papers with respect to any activity by Mr. Morgenthau's office, by the New York District Attorney's office and by the grand jury was that Mr. Wilson received a letter in 1979 which he did not respond to. Otherwise, I mean this whole array that you have put forth in—I must say, the most complete complaint that I have ever read—in that whole complaint, the only thing that I see that you allege was actually done by the New York District Attorney's

office is that Mr. Wilson was not responsive to a request for protection back in 1979.

The judge reemphasized that there was no dispute about the printing and attempted distribution of *Profiles of the Times* or about the fact that the District Attorney was investigating the incident after receiving a complaint—in the judge's words, “an entirely appropriate function” (A12). The judge also noted that the NCLC had raised no question with respect to the propriety of the subpoenas served upon its members during the search at PMR (A12).

Next, Judge Broderick found that it would be “highly improper” (A13) to interfere with the investigation, because the NCLC had demonstrated no colorable basis for interfering with it and had failed to show any probability of irreparable injury. The judge stated:

The investigation that is going on is a grand jury investigation. It is one that may or may not result in the bringing of charges of criminal activity against one or more people. There is certainly no evidence before me at the present time that indicates that any of those grand jury subpoenas were directed to members of the plaintiff [*sic*] core members and, even if they had been, on the circumstances that are before me, it would have been quite appropriate to serve such subpoenas if those persons were involved or thought to be involved in an activity that was being investigated. . . .

It would be an unhealthy situation, indeed, in my judgment, if the federal court, except in extremely unusual circumstances, interfered with a state district attorney's office and with a grand jury in the investigation of possible crime.

In analyzing the complaint and in accepting as true for purposes of this application the allegations of that complaint, I find nothing in it that suggests any basis for intervention by this court. The complaint, as I have already mentioned, ranges widely. It covers a vast period of time and it covers activities in various areas of the globe. The very volume of the allegations in the complaint points up, in my judgment, the sparsity of those allegations which relate in any way to the District Attorney's office or which relate in any way to the investigation which is currently under way. This is not a situation where the District Attorney is conducting an investigation where there has been no wrongdoing and where there has been no complaint about wrongdoing. There has been wrongdoing in that a publication has been circulated under false pretenses and there has been a complaint about that wrongdoing.

I can envision no untoward consequences to the plaintiff in this action by that investigation continuing and I can see, therefore, no basis upon which preliminary relief would be justified (A13-14).

Finally, the judge went on to note "a convergence of the relief that is asked for in this complaint," that is, that the NCLC was seeking to enjoin the investigation permanently as well as preliminarily, and he ruled that given his denial of the NCLC's application for a temporary restraining order and a preliminary injunction, it was appropriate to dismiss the complaint altogether (A14). The judge stated to counsel for the NCLC:

[M]y finding is that while for the purposes of this motion I have found that you had standing, your entire complaint here is that an improper investigation is going on and that you have been irreparably injured. I am finding that there has not been a showing that the

investigation is improper. I then went on and made a finding on irreparable harm with the thought that if the Court of Appeals found I was wrong on the finding preliminary to that, that it would also have my finding with respect to irreparable harm in the event that I was wrong, but ultimately my finding is that the allegations in your complaint do not state a cause of action and I dismiss the complaint (A16-17).

D. The Court of Appeals Decision

In an informal opinion, the Court of Appeals held that the District Court had properly dismissed the complaint. The Court wrote:

It is well settled that a complaint is subject to dismissal if it appears to a certainty no relief can be granted under any set of facts that can be proved in support of its allegations. *Conley v. Gibson*, 355 U.S. 41, 45 (1957). See also *Koch v. Yunich*, 533 F.2d 80, 85 (2d Cir. 1976) ("Complaints relying on the civil rights statutes are plainly insufficient unless they contain some specific allegations of fact indicating a deprivation of civil rights, rather than state simple conclusions.")...

First, with respect to the showing of irreparable harm, appellants have made only conclusory allegations that the investigation "will cause . . . irreparable harm and function solely to chill plaintiffs in the exercise of their Constitutional rights." There is no indication, in either the complaint or supporting affidavits, of a factual basis for these allegations.

In addition, appellants' complaint fails to state a cause of action. As the Supreme Court has stated, "persons having no fears of state prosecution except those that are imaginary or speculative, are not to be accepted as appropriate plaintiffs in such cases." *Younger v. Harris*, 401 U.S. 37, 42 (1971). There is

no basis, in the case at bar, for suggesting that appellants are the targets of the investigation; in fact, neither has ever been subpoenaed. Moreover, appellants' allegations that the investigation was brought in bad faith and for purposes of harassment are stated in mere conclusory terms, without any factual support.

We acknowledge that, under the *Conley v. Gibson* standard, a *sua sponte* dismissal under Rule 12(b)(6) should be scrutinized with the utmost care. Even under liberal pleading rules, however, the complaint is clearly insufficient. No matter what set of facts the appellants may ultimately prove in support of its allegations, we believe that it will not suffice to satisfy the usual equitable tests (A2-3).

Reasons for Denying the Writ

1. This case presents no question worthy of this Court's review. Petitioners raise no claim which involves unsettled principles of law or a conflict among the lower courts.

In *Conley v. Gibson*, 355 U.S. 41 (1957), this Court held that a federal complaint is properly dismissed where "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." 355 U.S. at 45-46. The Court of Appeals applied this rule, citing *Conley v. Gibson*, in affirming the dismissal of petitioners' complaint on the ground that it fails to state a cause of action. This case accordingly does not involve any issue concerning the standard for determining the sufficiency of a complaint, but turns merely on the Court of Appeals' application of that standard to petitioners' particular complaint.

Petitioners may be attempting to suggest that a more significant question is presented when they analogize their situation to that of the plaintiffs in *Ealy v. Littlejohn*, 569 F.2d 219 (5th Cir. 1978) (Petition, pp. 11-13), but that suggestion would be untenable. In *Ealy v. Littlejohn*, the plaintiffs, members of a black citizens association, sought to enjoin a Grand Jury investigation which the plaintiffs charged had been undertaken in bad faith to retaliate for their public criticism of a prior investigation into the homicide of a young black. To support their claim of bad faith, the plaintiffs alleged a wealth of specific facts: that the Grand Jury had reconvened after they circulated their criticism and subpoenaed all officers of the association, as well as its records and minutes; had questioned members and officers about the association's membership, meetings, and financial affairs; and had referred its report to prosecutors and state tax officials for "appropriate action." 569 F.2d at 223-24. These allegations were held sufficient to state a claim to injunctive relief.

In this case, by contrast, the complaint alleges only one specific fact linking the Grand Jury investigation to the NCLC, namely, that police officers went to PMR and served subpoenas on nine employees who are members of the NCLC. That fact does not tend to show that respondents undertook the investigation of counterfeit printed matter to harass the NCLC or retaliate for its exercise of constitutional rights. The putative support for petitioners' claim of bad faith is otherwise found mostly in the Steinberg affidavit (A56-81). But the statements in that document, almost all attributed to anonymous "confidential sources," are irrelevant, conclusory, and wholly speculative with re-

spect to respondents' motives in the investigation, and it cannot be disputed that the courts below properly rejected them as a basis for enjoining the investigation. See 5 C. Wright & A. Miller, *Federal Practice and Procedure* §1216, pp. 120-25 (1969).

In short, this case is not at all like *Ealy v. Littlejohn*, and the distinction between these cases does not suggest that there is a question of what standard should be applied in evaluating the sufficiency of petitioners' complaint. Rather, the distinction lies in the simple fact that petitioners have not sufficiently alleged bad faith. Petitioners' elaborate arguments and multiple citations cannot disguise that fact. In essence, petitioners ask this Court to examine their complaint once again and find what two lower federal courts and the New York state courts have been utterly unable to find. It would not serve the purposes of certiorari to accept that invitation. Supreme Court of the United States Revised Rules, Rule 17; *United States v. Johnston*, 268 U.S. 220, 227 (1925).

Petitioners' second issue calls for the same comment. A motion to recuse under 28 U.S.C. §455 inevitably turns on the facts and circumstances of the particular case. The motion is addressed to the discretion of the sitting judge, and if he denies it, his action is reviewable only for clear error or abuse. See, e.g., *United States v. Miranne*, 688 F.2d 980, 985 (5th Cir. 1982), *cert. denied*, — U.S. —, 103 S.Ct. 736 (1983); *Potashnick v. Port City Construction Co.*, 609 F.2d 1101, 1111-12 (5th Cir.), *cert. denied*, 449 U.S. 820 (1980). In this instance too, petitioners raise no issue concerning the standard to be applied in resolving their claim that Judge Pratt should have recused himself;

they merely assert that the judge's impartiality could reasonably have been questioned in light of their alleged attacks upon him after the Abseam trials (Petition, pp. 18-19). This claim depends on the particular facts of this case and does not assume the significance which would warrant this Court's review.

To be sure, Judge Pratt's decision may not be reviewed if this Court chooses not to review it (*see* Petition, p. 20), but this fact does not alter the essentially particularized nature of petitioners' claim. Nor should it cause concern, because petitioners cannot claim that Judge Pratt treated them unjustly. Even harsh attacks on a judge's integrity should not be presumed to compromise his impartiality; and there is no reason to fear that Judge Pratt was in fact biased, given his unchallenged statement that he had not recognized petitioners before they moved to recuse him, had been unaware of petitioners' attacks, and was not influenced by them. On this record, the notion that Judge Pratt was biased against petitioners, or that his impartiality might reasonably be questioned, is frivolous.

2. Even if the questions petitioners present were worthy of review, the writ should still be denied, because a procedural barrier precludes the federal courts from entertaining petitioners' complaint. The allegations in petitioners' federal complaint are virtually identical with those the NCLC submitted when it moved the New York Supreme Court to intervene, to quash the Grand Jury subpoenas, and to enjoin the investigation.* In summarily denying the NCLC's motion to intervene, the New York court neces-

* The NCLC's state-court motion and supporting affidavits were included as exhibits in the record before the District Court.

sarily found these allegations insufficient to state a claim to relief.* In New York, a dismissal for failure to state a claim bars a second action based on the same allegations. See D. Siegel, *New York Practice* (1978), pp. 332-33, 590-91; *Flynn v. Sinclair Oil Corp.*, 20 A.D.2d 636 (1st Dept.), *aff'd without opinion*, 14 N.Y.2d 853 (1964). Because the denial of petitioners' motion to intervene was the equivalent of a judgment dismissing for failure to state a claim, it must be given preclusive effect in a federal proceeding. *Allen v. McCurry*, 449 U.S. 90, 94-105 (1980); see also *Migra v. Warren City School District Board of Education*, — U.S. —, 52 U.S.L.W. 4151, 4153 (January 23, 1984); *Kremer v.*

* The Appellate Division's opinion affirming the Supreme Court's denial makes explicit the findings which were implicit in the lower court's summary action:

The motion by the National Caucus of Labor Committees (NCLC) to intervene was also properly denied. The NCLC has demonstrated no "real and substantial interest" in the Grand Jury investigation to justify a proposed intervention (see *Matter of Grand Jury*, 619 F.2d 1022, 1026-1027). The allegations by NCLC that the Grand Jury is investigating in bad faith, that it (the NCLC) is the target and that the investigation infringes on its members' associational rights, are wholly conclusory. They do not warrant even a hearing since they are not substantiated by credible, particularized allegations tending to show that they are true. The affidavit submitted in support of the motion contains hearsay, irrelevancies and conclusions. It states no specific facts which fairly support the NCLC's assertion that the Grand Jury investigation was undertaken in bad faith, or that the investigation was designed to infringe on the associational rights of any member of the NCLC. The witnesses herein were called *solely* because they worked for PMR. As noted, the instructions given to the police by the District Attorney left the police no discretion as to who should be served. The fact that nine of the witnesses are members of NCLC was not an issue before the proposed intervenor itself disclosed it. The NCLC's lack of standing to intervene also mandates rejection of its claim that it may move to quash the subpoenas, since both claims are based on its ability to establish an interest in this case and it has failed to do so. 95 A.D.2d at 716.

Chemical Construction Corp., 456 U.S. 461, 466-67 (1982); *Federated Department Stores, Inc. v. Moitie*, 452 U.S. 394 (1981); 18 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* §§4439, 4469, pp. 354, 659-60 (1981).

Conclusion

The petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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March 5, 1984